

THE HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CIVIL REVISION PETITION No.1791 of 2016

ORDER :

Challenge in this Civil Revision Petition is the order rendered by the Court of Principal District Judge, Karimnagar, in I.A.No.822 of 2015 in un-registered Appeal Suit, dated 19.01.2016.

2. Heard the submission of Sri Y. Ashok Raj, learned counsel for the revision petitioner, as well as Ms. P.V.V.B. Rajeswari, who argued on behalf of Sri K. Rajanna, learned counsel for respondent Nos.1 and 2.

3. The suit in O.S.No.574 of 2005, in which the revision petitioner herein was arrayed as Defendant No.1, was decreed by the Court of Principal Junior Civil Judge, Karimnagar, on 27.11.2013. Aggrieved by the said judgment and decree in the said suit, the revision petitioner preferred appeal with a delay of 546 days. A separate application vide I.A.No.822 of 2015 was filed

under Order 41 Rule 3-A C.P.C. r/w. Section 5 of the Limitation Act, seeking to condone the said delay. The Court of Principal District Judge, Karimnagar, through the impugned order dated 19.01.2016 dismissed the said application. Aggrieved by the same, the revision petitioner is before this Court.

4. Thus, in the factual scenario as narrated above, the point that emerges for determination is:

Whether there exists any infirmity in the order of the Court of Principal District Judge, Karimnagar, by which the delay, as sought for, is not condoned, as contended by the revision petitioner herein.

5. Making his submission, learned counsel for the revision petitioner contended that the revision petitioner had got good grounds to succeed in the suit itself and, indeed, the suit schedule property belongs to the revision petitioner and respondent Nos.1 and 2, who are plaintiffs to the suit, have got neither title nor possession over the said property, but, as the revision petitioner, who is defendant No.1 to the suit, could not pursue the matter

and adduce evidence, a decree was passed against him. He further submits that aggrieved by the said judgment and decree rendered by the Court of Principal Junior Civil Judge, Karimnagar, in O.S.No.574 of 2005, dated 27.11.2013, the revision petitioner preferred an appeal, but with a delay of around 500 days and sufficient reasons were shown as to why the appeal could not be preferred within time. But, without considering the grounds urged and the pleas taken by the revision petitioner, the Principal District Judge, Karimnagar, dismissed the said application filed for condonation of delay, thereby deprived the right of the revision petitioner in challenging the judgment and decree dated 27.11.2013 in O.S.No.574 of 2005 and, therefore, the revision petitioner approached this Court for justice.

6. Vehemently opposing the submissions made by learned counsel for the revision petitioner, the arguing counsel for respondent Nos.1 and 2 submitted that the revision petitioner was never diligent in prosecuting the matter and, indeed, he did not even evince proper interest

in the suit proceedings and the documents produced before this Court establishes the same. The learned counsel contended that the revision petitioner, who is Defendant No.1 in the suit, during the course of trial proceedings failed to cross-examine PW.1 in spite of granting several adjournments and, therefore, the evidence of PW.1 was closed and thereafter, the matter was posted for evidence on defendants' side. The revision petitioner, who is defendant No.1 to the suit, was ordered to adduce evidence and facilitating him, the suit was adjourned time to time for about 30 times within a span of two years, but the revision petitioner never came forward to adduce evidence and, as such, by closing his evidence, the matter was posted for arguments and, thereafter the suit was disposed of on merits. Learned counsel further contended that the revision petitioner has concocted a false story seeking for condonation of delay and the said story is untrue and unbelievable and, indeed, the revision petitioner was present in his village itself and he even participated in the General Elections of 2014, but suppressing all these facts, he filed an application for condonation of delay and that

through the counter affidavit, respondent Nos.1 and 2 have brought to the notice of the Court that the ground urged is false and sufficient cause is not shown to condone the delay and on that the Court of Principal District Judge, Karimnagar, has rightly dismissed the application and, therefore, the present revision petition is also liable to be dismissed.

7. It is to be noted that the delay is not a day or two or a month or two. The delay is 546 days. In the affidavit filed in support of the application seeking to condone the delay, the revision petitioner contended that he could not adduce evidence in the suit as he was moving here and there for employment for eking out his livelihood and recently he came to know about passing of the judgment and decree in O.S.No.574 of 2005 and his counsel also could not communicate him about the result of the suit as he was moving here and there for employment and, therefore, the delay occurred has to be condoned. It is not the case of the revision petitioner that he was unaware of filing of the suit. Having participated in the suit proceedings to some extent

by filing written statement, he stopped pursuing the matter thereafter. Even if it is taken that the statement that he was moving place after place for employment during the relevant period is true, no cause is shown as to why he could not contact his counsel at least over phone to know about the stage of the case. His statement is that he contacted his counsel on 14.06.2015 and came to know about passing of the decree. What prevented him to contact his counsel earlier to the said date is not stated anywhere. Making his submission that in the circumstances like this, the delay has to be condoned, learned counsel for the revision petitioner relied upon a decision of the Hon'ble Apex Court in the case between STATE vs. AHMED JAAN¹, wherein the Apex Court at para-11 of the order observed as follows :

"The expression "*sufficient cause*" is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. This Court

¹ LAWS(SC)-2008-8-11

reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal."

In the above decision, it is laid down that the expression "*sufficient cause*" is a elastic term and that each day's delay need not be explained in strict sense. Also it has been clearly held that the approach to be applied for condonation of delay would depend upon the cause shown and only when sufficient cause is shown, the relief sought for can be granted.

8. Making his submission that the plea that the revision petitioner was unaware of disposal of the suit for a long period of two years does not amount to sufficient cause,

learned counsel for respondent Nos.1 and 2 relied upon a decision of the combined High Court of Andhra Pradesh and Telangana in a case between ALLAVARAPU VEERABHADRA RAO AND OTHERS v. PAASI TATA AND OTHERS², wherein the Court at paras-4 and 5 of the order observed as follows:

“4. From the contents of the above-reproduced para, it is evident that the appellants have sought to throw the blame squarely on the advocate appearing for them in the Court below. The suit proceedings being original in nature and the appellants having participated in the trial are expected to know about the stage of the suit. If the judgment was pronounced on 18.4.2012 and even assuming that the advocate representing them has failed to inform them of the result, no litigant is expected to remain quiet for more than two years without even enquiring about the stage of the suit, especially, after the trial was completed. Therefore, the plea of the appellants that, as their Counsel has not informed them of the result for more than two years, they were not aware of the disposal of the suit, cannot, be accepted. If the allegation against their advocate bears truth, it constitutes gross professional misconduct on his part. It is not the pleaded case of the appellants that they have made any complaint to the Bar Council to take action against the advocate concerned.

5. The law is well settled that longer the delay, the heavier is the burden on the party to prove that he was prevented by sufficient cause from approaching the Court earlier. Though, ordinarily, the Courts have to take a liberal view while considering the applications for condonation of delay, the party, who fails to give plausible or convincing explanation

² 2015 (5) ALD 444

for condonation of delay, does not deserve any indulgence by the Court.”

9. On the same aspect, learned counsel for respondent Nos.1 and 2 also relied upon a decision of the combined High Court of Andhra Pradesh and Telangana in a case between ALLALA BHAGAVANTH RAO v. GARVANDULA VIJAYALAXMI AND OTHERS³, wherein the Court at paras-13 to 16 of the order held as follows:

“13. The word ‘*sufficient cause*’ is not defined either in the Limitation Act or in the C.P.C.; the reason appears to be that there is no straightjacket formula to decide whether the cause shown for condonation of delay is sufficient cause or not. Depending on the facts and circumstances of each case, the Court can exercise discretion and decide the sufficient cause. Sufficient cause shall be construed liberally without adopting any pedantic approach. It cannot be stretched to frustrate the very intention of Legislature in specifying the period for filing appeal or petition etc.

14. In *Lanka Venkateswarlu (Died) by L.Rs. v. State of A.P.*, 2011 (1) UPLJ 242 (SC), the apex Court heavily laid on the Courts when to allow the petitions, though no sufficient cause is made out, and ruled as follows:

“We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as “*liberal approach*”, “*justice oriented approach*”, “*substantial justice*” cannot be employed to jettison the substantial law of limitation, especially in cases where the Court

³ 2015 (5) ALD 598

concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any *lis* between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.”

15. In fact, the revision petitioner did not make out any sufficient cause except making a bald unsubstantiated allegation in the affidavit. If such lame excuses for condoning the delay are accepted as sufficient causes, virtually denuding or jettisoning the substantive law of limitation.

16. In view of the law declared by the apex Court basing on the concept of real justice, substantial justice the Courts cannot allow petitions under Section 5 of Limitation Act, when no sufficient cause is made out. Therefore, basing on lame excuse or unsubstantiated cause, it is difficult to condone the delay, liberally construing the word sufficient cause.”

10. Prescribing the outer limit in the form of limitation to approach the Court of law is to see that the parties to the

proceedings are not vexed with the litigation forever or for an inordinate length of period. The party, who succeeds in the suit will have legitimate expectation to enjoy the fruits of decree. When unsuccessful party, as per its whims and fancies, challenges the decree at a later point of time, the winning party would again be dragged for a further round of litigation. This is not the legislative intent. No doubt, the expression "*sufficient cause*" must receive a liberal construction so as to advance substantial justice. In the normal course, the delay in preferring the appeals would be condoned in the interest of justice. However, such delays should only be condoned where the Court finds that there is absence of negligence or inaction on the part of the party seeking the Court to condone the said delay. Willful default, negligent attitude or casual approach in approaching the Court is not expected to be entertained. Public interest and confidence upon the Courts is to be protected. Judicial verdict has to attain finality.

11. In the case on hand, this Court does not find any such cause, which amounts to '*sufficient cause*' for

condonation of delay. Further, negligent attitude on the part of the revision petitioner in pursuing the matter during the course of trial proceedings in the suit as well as in preferring the appeal is borne by record. Therefore, this Court does not find any infirmity in the order under challenge. The learned judge did not err either in appreciating the facts of the case or in coming to a just conclusion. Therefore, this Court is of the view that the Civil Revision Petition lacks merits.

12. Resultantly, the Civil Revision Petition is dismissed.
No order as to costs.

13. As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dr. JUSTICE CHILLAKUR SUMALATHA

20.04.2022.

NOTE : L.R. Copy be marked.
(B/O)
Msr

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(Msr)