THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI

Civil Revision Petition No.1573 OF 2024

ORDER:

Aggrieved by the order dated 22.03.2024 in I.A.No.220 of 2022 in O.S.No.61 of 2018 (hereinafter will be referred as 'impugned order) passed by the learned Senior Civil Judge at Nagarkurnool (hereinafter will be referred as 'Trial Court'), the petitioners/defendants have preferred the present Revision to set aside the impugned order, wherein the petition filed by them under Section 5 of the Limitation Act, was dismissed.

2. For the sake of convenience, the parties hereinafter are referred to as they are arrayed before the Trial Court.

3. The brief facts of the case, which necessitated the revision petitioners to file the present revision, are that the petitioners/defendants have filed I.A.No.220 of 2022 under Section 5 of the Limitation Act to condone the delay of 1393 days in filing set aside petition. The reason assigned by the petitioners/defendants for the said delay is on 27.09.2018 when the suit was coming up for appearance of the defendants, the defendant No.1 was suffering from ill health in covid-pandemic and she being lonely lady could not attend the Court. On the

other hand, the respondent/plaintiff filed counter mainly contending that when the respondent/plaintiff filed E.P.No.7/2019 for execution of decree and deposited remaining balance sale consideration into the court, the petitioners/defendants appeared before the Court and filed the petition to condone the huge delay of 1393 days and thus, prayed to dismiss the petition. The learned Trial Court after considering the rival contentions has dismissed the petition. Aggrieved by the same, the petitioners/defendants have filed the present Civil Revision Petition to set aside the impugned order.

4. Now the point for determination is whether the impugned order passed by the learned Trial Court is in proper perspective or liable to be set aside?

5. Heard both sides and perused the record including the grounds of revision.

6. As can be seen from the record, originally the respondent/plaintiff has filed a suit for specific performance of agreement of sale in respect of land admeasuring Ac.1.00 guntas in Sy.No.185/A1 situated in the limits of Ramapur Village of Kollapur Mandal and to declare the registered sale

deed executed by petitioner No.1/defendant No.1 in favour of petitioner No.2/defendant No.2 as null, void and not binding on the respondent/plaintiff and also for recovery of possession in respect of suit schedule property against the petitioners/defendants. It is not the case of the petitioners/defendants that summons/notices were not served on them. The suit was posted to 27.09.2018 for appearance of the defendants, who failed to attend the Court on the said date. Subsequently the trial Court passed an *exparte* decree on 29.11.2018 in favour of the respondent/plaintiff. The only reason assigned by the defendants before the trial Court for their non appearance on 27.09.2018 is that petitioner No.1/defendant No.1 was suffering from ill health in Carona pandemic situations and due to family problems.

7. It is pertinent to mention that the initial cases of COVID-19 pandemic in India were reported in and around the year 2020 and whereas the suit was posted for appearance of the defendants on 27.09.2018. Even by the time of filing the delay petition, almost two years have been passed away from the year of wiping out of covid-19 pandemic from India. Thus, the date fixed for appearance of the defendants before the trial Court i.e.,

27.09.2018 is far away from the date of spread of covid-19 pandemic in India. Even the trial Court Judge rightly observed at paragraph No.10 of the impugned orders that to the knowledge of entire world at large, covid-19 situations in India arose from March, 2020 and first lockdown was announced on 25.03.2020 by the Government, hence, it is glaring on record that the ground taken by the counsel for the petitioners/defendants cannot be accepted as true and correct.

8. It is not even the case of the petitioners/defendants that they were infected with covid-19 or any other viral disease. It is not the case of the petitioner No.1/defendant No.1 that the petitioner No.2/defendant No.2 is also suffering from ill health. When petitioner No.1/defendant No.1 is suffering from ill health, petitioner No.2/defendant No.2 ought to have attended the Court to avoid passing of an *exparte* decree. It is not the case of the petitioner No.1/defendant No.1 that she is suffering from ill health for years together. It is the case of the defendant No.1 that she is suffering from ill health but there is no explanation from the petitioners/defendants as to why defendant No.2 has not appeared before the trial Court on 27.09.2018 or any other date prior to passing of the *exparte*

decree. The trial Court has rightly observed at paragraph No.11 of the impugned orders that to establish health ailments of any of the petitioners/defendants, no medical record has been filed before the Court.

9. So far as the other ground raised by the petitioner No.1/defendant No.1 for condoning the delay is that she has family problems. The petitioner No.1/defendant No.1 did not specify as to what kind of family problems that are being faced by her and from whom, more particularly, when she herself asserted that she is the lonely lady living alone.

10. One of the grounds raised in this revision is that the trial Court ought to have overlooked the small mistake in view of the peculiar facts and circumstances of the case. It is pertinent to note that the respondent/plaintiff moved E.P.No.7 of 2019 prior to covid-19 pandemic and notices were served on the petitioners/defendants. Though, Sri B. Rajasekhar, Advocate filed vakalath on behalf of petitioner No.1/defendant No.1 on 21.11.2019, counter was filed on 04.03.2021 i.e., almost more than 15 months. In the affidavit the petitioner No.1/defendant No.1 mentioned that they approached present counsel (i.e., Sri B. Rajashekar, Advocate) and came to know about the status of

the case recently. The affidavit in the delay petition was filed by the petitioners/defendants on 31.01.2024. Whereas the counsel engaged by the petitioners/defendants filed vakalath before the Executing Court on 21.11.2019. Thus, the question of knowing the status of the case by the petitioners/defendants recently does not arise. After filing vakalath by Sri B. Rajasekhar before the Execution Court, the petitioners/ defendants ought to have filed the delay petition immediately. But the petitioners/defendants filed the delay petition belatedly on the ground that they came to know recently. The learned counsel for the respondent further relied a decision upon **Mohd. Sahid and others v. Raziya Khanam (dead) through LRs and others**[1] wherein the Honourable Supreme Court observed that both first appellate court and the High Court recorded concurrent findings that the appellants have filed the application for condonation of delay with incorrect facts and were negligent in pursuing the matter and rightly refused to condone the delay. Even in the case on hand, the petitioners/defendants misrepresented and suppressed the material facts. Moreover, despite having knowledge about the case and passing of *exparte* decree, the petitioners/defendants

[1] (2019) 11 Supreme Court Cases 384

kept quiet for years together without filing any set aside petition. Hence, viewed from any angle, the non appearance of the defendants before the trial Court despite receiving summons is not a small mistake and even the reasons assigned by the petitioners/defendants for such non appearance are also not appearing to be genuine and true. Thus, the contention of the learned counsel for the revision petitioners that the trial Court ought to have overlooked the small mistake in view of the peculiar facts and circumstances of the case is unsustainable.

11. The other ground raised by the revision petitioners/defendants is that the trial Court while exercising an equitable jurisdiction ought to have directed to refund the advance with appropriate interest in terms of Section 22 of the Specific Relief Act as the respondent/plaintiff paid only Rs.1,00,000/-. The dispute upon which the revision petitioners approached this Court is to condone the delay of 1393 days in filing set aside petition. Thus, the limited question before this Court is whether the petitioners/defendants have made out sufficient cause to condone the inordinate delay of 1393 days in filing the set aside petition. This Court cannot go into the merits of the main case, which is filed for specific performance

of agreement of sale and other consequential reliefs. Even otherwise, the respondent/plaintiff has deposited the balance sale consideration of Rs.8,60,000/- during the course of execution proceedings. Moreover, it is the discretion of the trial Court to grant alternative relief depending upon the facts and circumstances. It is the contention of the respondent/plaintiff that the petitioner No.1/defendant No.1 in order to deprive the right of the respondent/plaintiff over the suit schedule property alienated the suit schedule property in favour of petitioner No.2/defendant No.2 for meagre sale consideration of Rs.50,000/- vide registered sale deed bearing document No.1484/2018, dated 01.06.2018. If such is the case, the advance sale consideration of Rs.1,00,000/- paid by the respondent/plaintiff is much more than the entire sale consideration under the registered sale deed bearing document No.1484/2018, dated 01.06.2018.

12. On perusal of the grounds of revision, it is very surprising to observe that petitioners/defendants have not urged a single ground with regard to the sufficient cause in condoning the delay of 1393 days. All the grounds urged by the petitioners/defendants in this revision petition are with regard

to granting of alternative relief in the main suit for specific performance of agreement of sale. Instead of establishing the justifiable and sufficient cause for the delay, the petitioners/defendants are going into the merits of the case, which is not the subject matter of the present revision petition.

13. The term sufficient cause has nowhere been defined in the Limitation Act; however, it seems that the courts have construed it quite liberally in order to meet the ends of justice, so that meritorious matters are not disregarded solely on the basis of a slight delay. It should also be borne in mind that the law of limitation in itself was founded on the principles of public policy in order to ensure that the parties approach the Court for vindication of their rights without causing unreasonable delay. Whether or not the furnished reason would constitute a sufficient cause will depend on facts and circumstances of each case. There is no prescribed formula which can be applied for accepting or rejecting the explanation provided for proving the delay. In a case where a party has been negligent, the approach cannot be the same and liberal interpretation of the term will be discouraged. In normal circumstances, acceptance of the reason furnished should be the rule and refusal an

exception, more so when no negligence can be attributed to the defaulting party. Though the Courts shall adopt liberal approach while dealing with the delay petitions, in **Pathapati Subba Reddy (died) by LRs and others v. The Special Deputy Collector**[2] the Honourable Supreme Court observed as under:

> *"The phrases 'liberal approach', 'justice oriented approach' and cause for the advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.*
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> *17. It must always be borne in mind that while construing 'sufficient cause' in deciding application under Section 5 of the Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of a decree-holder accrues and this right ought not to be lightly disturbed. The decree-holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights.*
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> *18. This Court as far back in 1962 in the case of Ramlal, Motilal And Chhotelal vs. Rewa Coalfields Ltd has emphasized that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as excusing the delay is the discretionary jurisdiction vested with the court. The court, despite establishment of a 'sufficient cause' for various reasons, may refuse to condone the delay depending upon the bona fides of the party.*
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> *19. In Maqbul Ahmad and Ors. vs. Onkar Pratap Narain Singh and Ors, it had been held that the court cannot grant an exemption from limitation on equitable consideration or on the ground of hardship. The court has time and again repeated that when mandatory provision is not complied with and delay is not properly, satisfactorily and convincingly explained, it ought not to condone the delay on sympathetic grounds alone.*
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> *20. In this connection, a reference may be made to Brijesh Kumar and Ors. vs. State of Haryana and Others wherein while observing, as above, this Court further laid down that if some person has obtained a relief approaching the court just or immediately when the cause of action had arisen, other persons cannot take the benefit of the same by approaching the court at a belated stage simply on the ground of parity, equity, sympathy and compassion.*
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> *21. In Lanka Venkateswarlu vs. State of Andhra Pradesh & Ors, where the High Court, despite unsatisfactory explanation for the delay of 3703 days, had allowed the applications for*

[2] [2024] 4 S.C.R. 241

> *condonation of delay, this Court held that the High Court failed to exercise its discretion in a reasonable and objective manner. High Court should have exercised the discretion in a systematic and an informed manner. The liberal approach in considering sufficiency of cause for delay should not be allowed to override substantial law of limitation. The Court observed that the concepts such as 'liberal approach', 'justice-oriented approach' and 'substantial justice' cannot be employed to jettison the substantial law of limitation."*

14. The learned counsel for the respondent relied upon a decision in **Majji Sannemma alias Sanyasirao v. Reddy Sridevi and others**[3]**,** wherein the Honourable Supreme Court observed as under:

> *"Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by respondent Nos.1 and 2 herein – appellants before the High Court for condonation of huge delay of 1011 days in preferring the Second Appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos.1 and 2 herein – original defendants. Impugned order passed by the High Court is unsustainable both, on law as well as on facts."*

15. The learned counsel for the respondent further relied upon a decision in **Basawaraj and another v. Special Land Acquisition Officer**[4]**, wherein the Honourable Supreme Court observed as under;**

> *"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or*

[3] (2021) 18 Supreme Court Cases 384
[4] (2013) 14 Supreme Court Cases 81

> *found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."*

16. The learned counsel for the respondent relied upon a decision in **B. Madhuri Goud v. B. Damodar Reddy**[5], wherein the Honourable Supreme Court set aside the finding of the High Court in condoning the delay of 1236 days, on the ground that High Court ought not to have accepted the fanciful explanation. Further, In **D. Gopinathan Pillai v. State of Kerala and another**[6], the Honourable Apex Court observed as under:

> *"We are unable to countenance the finding rendered by the Sub Judge and also the view taken by the High Court. There is no dispute in regard to the delay of 3320 days in filing the petition for setting aside the award. When a mandatory provision is not complied with and when the delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay, only on the sympathetic ground. The orders passed by the learned Sub Judge and also by the High Court are far from satisfactory. No reason whatsoever has been given to condone the inordinate delay of 3320 days. It is well-considered principle of law that the delay cannot be condoned without assigning any reasonable, satisfactory, sufficient and proper reason. Both the courts have miserably filed to comply and follow the principle laid down by this Court in catena of cases. We, therefore, have no other option except to set aside the order passed by the Sub-Judge and as affirmed by the High Court. We accordingly set aside both the orders and allow this appeal."*

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[5] (2012) 12 Supreme Court Cases 693
[6] (2007) 2 Supreme Court Cases 322

17. In **P.K.Ramachandran v. State of Kerala and another**[7]**,** the Honourable Supreme Court observed as under:

> *"We are not satisfied that in the facts and circumstances of this case, any explanation, much less a reasonable or satisfactory one had been offered by the respondent State for condonation of the inordinate delay of 565 days. Law of limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time."*

18. Thus, considering the principle laid down in the above said decisions of the Honourable Supreme Court and considering the fact that the petitioners/defendants have approached this Court with unclean hands, this Court is of the view that liberal approach cannot be extended to the delay petition filed by the petitioners/defendants to condone the enormous delay of 1393 days in filing set aside petition.

Furthermore, as observed by the Honourable Supreme court in **M/s. Puri Investments v. M/s. Young Friends And Company & others**[8] when there is no perversity in the impugned order the High Court ought not to have acted as an

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[7] (1997) 7 Supreme Court Cases 556
[8] Civil Appeal No. 1609 OF 2022 (arising out of SLP (C) No. 6516/2019) decided on 23.02.2022

appellate body in adjudicating the application under Article 227 of the Constitution of India.

19. In view of the above facts and circumstances and considering the principle laid down in the above said decisions, this Court is of the considered opinion that the trial Court has exercised its discretionary power in passing the impugned order and moreover, the revision petitioners/defendants failed to establish that the impugned order passed by the trial Court suffers from irregularity or infirmity. In such circumstances, this Court cannot interfere with the findings of the trial Court by exercising the power under Article 227 of the Constitution of India. Therefore, the Civil Revision Petition is devoid of merits and thereby it is liable to be dismissed.

20. In the result, this Civil Revision Petition is dismissed. There shall be no order as to costs.

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

JUSTICE M.G. PRIYADARSINI

Date: 19.07.2024

Note: LR Copy to be marked.
B/o. AS