

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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CIVIL REVISION PETITION NO.475 OF 2012

DATED 27th MARCH, 2015

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Between:

R.Buchi Reddy(died) per LRs.

.... Petitioners

and

R.Pratap Reddy and others.

... Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.475 OF 2012

ORDER

This Civil Revision Petition arises out of the order dated 28.06.2011 passed by the learned Principal District Judge, Warangal, in I.A.No.316 of 2007 in un-numbered ASSR. 6553 of 2006. The unsuccessful plaintiff in O.S.No.270 of 1995 on the file of the learned II Additional Senior Civil Judge, Warangal, filed the subject IA seeking condonation of the delay of 389 days in preferring an appeal against the judgment and decree therein. By the order under revision, the appellate Court dismissed the I.A.

In the affidavit filed in support of the subject IA, the petitioner stated that he did not know of the dismissal of his injunction suit for over a year as he was suffering from a chronic urinary tract problem, whereby he was bedridden. He further stated that he could contact his Advocate with the help of his son with great difficulty, applied for certified copies of the judgment and decree and then filed the appeal with 389 days delay.

The respondents herein, being the defendants in the suit, filed a counter to the I.A. pointing out that no material evidence had been placed before the Court in proof of the petitioner's claimed chronic ill-health and alleging that he was hale and healthy all along. They pointed out that the suit was dismissed on 19.08.2005, a copy application was made by the petitioner on 28.08.2006, certified copies of the judgment and decree were received by him on 20.09.2006, but the appeal was filed only on 12.10.2006. These facts, according to them, established that the condone delay petition was devoid of

bonafides.

It appears that the petitioner came forward with an application in June, 2011, seeking to place on record the medical certificate dated 08.08.2005 issued by one Dr.T.Yadagiri Rao. This application was allowed by the appellate Court and its contents were analyzed by the Court below, as is evident from the order under revision. In the said certificate, the doctor had asserted that the petitioner was under his treatment from August, 2005 to September, 2006. A copy of the said certificate was also produced before this Court and perusal thereof confirms that the dates noted by the appellate Court in the order under revision are correct. The certificate is dated 08.08.2005 but records that the petitioner was under the doctor's treatment till September, 2006! This contradiction completely discredits this certificate and it cannot be relied on for any purpose. Further, as rightly pointed out by the respondents, the lethargy on the part of the petitioner in filing an appeal even after obtaining certified copies of the judgment and decree clearly speaks against him.

That apart, Sri Ghanshyamdas Mandhani, learned counsel for the respondents, also informed this Court that the petitioner had filed a separate suit in O.S.No.225 of 2007 before the learned Principal Senior Civil Judge, Warangal, against respondents 1 to 4 herein and another, seeking declaration of his title in respect of the very same property which was the subject matter of O.S.No.270 of 1995. The plaint filed in the said suit was sought to be placed on record by way of CRP MP No.6616 of 2014, which stands allowed. Perusal of the said plaint reflects that the petitioner also sought cancellation of a registered sale deed and again prayed for a permanent injunction.

The petitioner died on 11.12.2012 and his legal heirs came on record as petitioners 2 to 4. Sri Ashok Ram V., learned counsel, asserted that they would be prejudiced by the findings of the trial Court in the judgment passed in O.S.No.270 of 1995. However, the plaint in

O.S.No.225 of 2007 reflects that the original petitioner himself filed the said suit also and his legal heirs came on record therein only after his death. It appears that the original petitioner filed the subject condone delay petition before the appellate Court and simultaneously filed an independent suit for declaration of his title. It would therefore not be open for his legal representatives to contend that they would be prejudiced in the second suit by the findings in the judgment passed in the first suit. Their predecessor already committed himself to the said course of action.

Sri Ashok Ram V., learned counsel, also placed reliance on

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to support his contention that this Court should be liberal in dealing with the subject condone delay petition. In para 6 of the said judgment, upon a conspectus of earlier case law, the Supreme Court held that in every case of delay there would be some lapse on the part of the litigant but that alone should not be enough to turn down his plea for condonation and to shut the door against him. The Supreme Court observed that if the explanation did not smack of *malafides* and it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. In para 8 of the judgment, while summarizing the relevant principles, the Supreme Court opined that sufficient cause for not making an application within time should be understood and applied in a reasonable, pragmatic, practical and liberal manner depending upon the facts and circumstances of the case, as the words 'sufficient cause' in Section 5 of the Limitation Act, 1963, should receive a liberal construction so as to advance substantial justice when the delay is not on account of any dilatory tactics, want of *bonafides*, deliberate inaction or negligence on the part of the applicant.

Considering the case on hand in the backdrop of the above settled legal position, this Court is of the opinion that it cannot be brought within the four corners of the liberal principles enunciated by

the Supreme Court. A liberal approach on the part of the Court would be warranted, as pointed out by the Supreme Court, only if the applicant demonstrates that there is no deliberate inaction, want of *bonafides* or negligence on his part. Presently, the admitted facts manifest that the petitioner completely lacked *bonafides*. He failed to produce a medical certificate in support of his plea of chronic ill-health in the first instance and the medical certificate filed long thereafter clearly manifested its lack of credibility. Further, his approach in pursuing the litigation also indicated gross negligence. He therefore failed utterly in making out 'sufficient cause' for condoning the delay of over a year in approaching the appellate Court. Thus, this Court finds no reason to interfere with the order passed by the appellate Court holding to that effect.

The Civil Revision Petition is devoid of merit and is accordingly dismissed. CRP MP No.6616 of 2014 is allowed. Other pending miscellaneous petitions, if any, shall stand dismissed.

No order as to costs.

SANJAY KUMAR, J.

27th MARCH, 2015.
PGS

[\[1\]](#) (2008) 8 SCC 321