

THE HON'BLE SRI JUSTICE A.V. SETHA SAI

CRP No.3781 of 2013

Oral Order:

The plaintiff in O.S.No.7 of 2008 on the file of the Court of the Junior Civil Judge, Vemulawada, Karimnagar District is the petitioner in the present revision petition filed under Section 115 of the Code of Civil Procedure. In the present revision challenge is to the order dated 2.6.2013 passed by the said Court in I.A.No.290 of 2012 filed by the petitioner herein under Section 5 of the Indian Limitation Act, 1963 (for short "Limitation Act"), seeking condonation of delay of 575 days in filing the petition to restore the suit.

Heard Sri V.V. Ramana Rao, learned counsel for the petitioner and Sri Venkateswara Rao Varanasi learned counsel for the respondents apart from perusing the material available before the Court.

The petitioner herein instituted O.S.No.7 of 2008 against the respondents for declaration of title and for perpetual injunction in respect of the plaint schedule property attached to the house No.3-2-6 and 3-2-7 in Sy.No.1341/1 situated within the Grampanchayat limits of Vemulawada. The learned Junior Civil Judge, by way of an order dated 30.8.2010, dismissed the said suit for default. Seeking restoration of the said suit, the petitioner filed an application under Order 9 Rule 9 CPC and also the present I.A.No.290 of 2012, seeking condonation of delay of 575 days in filing the said application. The respondents herein resisted the said application by filing counter. The learned Judge, by virtue of the order dated 2.6.2013, dismissed the said application filed by the petitioner herein under Section 5 of the Limitation Act.

Calling in question the validity and legal sustainability of the said order passed by the learned Junior Civil Judge, the present revision petition has been filed.

It is contended by the learned counsel for the plaintiff/petitioner herein

that the order under revision is erroneous, contrary to law and is opposed to the provisions of the Section 5 of the Limitation Act. It is further contended by the learned counsel that the reasons assigned by the Court below in the impugned order are neither sustainable nor tenable and that they are not cogent and convincing. It is further submitted by the learned counsel that had the contents of the affidavit filed in support of the application filed under Section 5 of the Limitation Act been considered from proper prospective, the impugned order would not have emanated. It is also submitted by the learned counsel that the Court below ought to have adopted a liberal approach while considering the application filed by the petitioner herein since substantial rights are involved in the matter. In support of his submissions and contentions, learned counsel for the petitioner has placed reliance on the judgments reported in **COLLECTOR, LAND ACQUISITION, ANATNAG AND ANOTHER v. MST. KATIJI AND OTHERS , N. BALAKRISHNAN V. M. KRISHNAMURTHY .**

On the contrary, it is vehemently contended by the learned counsel for the respondents that the order passed by the Court below is in accordance with the provisions of Section 5 of the Limitation Act and there is no perversity nor jurisdictional error in the impugned order passed by the Court below, as such the order impugned is not amenable for any interference by this Court under Section 115 of the Code of Civil Procedure. It is further submitted by the learned counsel for the respondents that since the order passed by the Court below is a well reasoned order and well crafted one, the same does not warrant any interference of this Court. It is also submitted by the learned counsel for the respondents that since the petitioner herein did not assign proper and sufficient reasons in the affidavit filed in support of the application, the Court below is perfectly justified in dismissing the application filed by the petitioner herein. To bolster his submissions and contentions, learned counsel for the respondents has placed reliance on the judgment of the Hon'ble the Supreme Court in **BRIJESH KUMAR AND OTHERS v. STATE OF HARYANA AND OTHERS .**

In the above background now the issues which this Court is called upon to answer in the present revision petition are –

1) Whether the order passed by the Court below is in accordance with law ?

2. Whether the order under revision requires any correction by this Court under Section 115 of the Code of Civil Procedure?

The information available before this Court manifestly discloses that the petitioner herein instituted the present suit for declaration of title and for perpetual injunction in respect of the immovable property situated at Vemulawada, Karimnagar District. The learned Junior Civil Judge dismissed the said suit for default on 30.8.2010. The petitioner herein filed the present I.A.No.290 of 2012 on 7.8.2012. In the affidavit filed in support of the present application filed under Section 5 of the Limitation Act, the petitioner has averred that she suffered severe back pain for which she was hospitalised and had taken treatment and despite the same she is still bed ridden. In support of her plea, the petitioner herein filed a medical certificate to show that she had taken treatment for lower back ache in Vani Nursing Home, Sircilla from 29.8.2010 to 2.9.2010. On the other hand, in the counter filed by the respondents, the respondents herein denied the said averments made by the petitioner herein. The respondents herein also stated that the first defendant filed a suit for perpetual injunction and the said suit was decreed ex-parte and seeking to set aside the ex-parte decree passed in O.S.No.93/1996, the petitioner herein filed I.A.No.161 of 2009 and the same also ended in dismissal. The learned Junior Civil Judge observed in the impugned order that though the petitioner was discharged from hospital on 2.9.2010, she did not choose to approach her counsel to know about the case and that the delay of 575 days is not an ordinary thing. The learned Judge also observed that except the medical certificate, the petitioner did not produce any prescription, investigation reports, X-rays etc., to show that she obtained treatment as inpatient for four days. The

learned Judge dismissed the application also on the ground that the petitioner herein suffered decree in O.S.No.93 of 1996.

The validity and legal acceptability of the reasons assigned by the learned Judge are required to be decided and examined in the light of the above judgments rendered by the Hon'ble Supreme Court reported in **MST. KATIJI's** case (1 supra) wherein the Hon'ble Supreme Court at paragraph 3 held as under :

“ The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts 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. And such a liberal approach is adopted on principle as it is realized that:-

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

1 . Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a

meritorious matter being thrown out at the very

threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after

hearing the parties.

3. "Every day's delay must be explained" does not

mean that a pedantic approach should be made.

Why not every hour's delay, every second's delay?

The doctrine must be applied in a rational

common sense pragmatic manner.

4. 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.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

In **N. BALAKRISHNAN's** case (2 supra), the Hon'ble Supreme Court at paragraph 13 held as under :

"It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be

borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

In the above referred judgment the Hon’ble Supreme Court affirmed the order passed by the trial Court, condoning the delay of 883 days. Coming to the judgment cited by the learned counsel for the respondents in **BRIJESH KUMAR**’s case (3 supra), the Supreme Court at paragraphs 11,12, and 16 held as under :

“11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

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16. In the instant case, after considering the facts and circumstances and the reasons for inordinate delay of 10 years 2 months and 29

days, the High Court did not find sufficient grounds to condone the delay. ”

While referring to the above cited judgment, it is the contention of the learned counsel for the respondents that in the instant case also there is abnormal and unexplained delay of 575 days in filing the application, as such the petitioner is not entitled for any legal assistance by this Court. There is absolutely no dispute that the petitioner is a divorcee and also there is no dispute with regard to the fact that the present suit is one for declaration of title and for perpetual injunction in respect of the plaint schedule property and that substantial and valuable rights of the parties are involved in it. Another reason assigned by the learned Judge in the impugned order is with regard to the suit O.S.No.93 of 1996 filed by the first defendant. A copy of the plaint filed in O.S.No.93 of 1996 is placed on record, which shows that the said suit is only for perpetual injunction whereas the present suit is one for declaration of title and for perpetual injunction. Therefore the said reasoning assigned by the court below is unsustainable. In the judgment cited by the learned counsel for the respondents reported in **BRIJESH KUMAR's** case (3 supra), the Supreme Court also held that the Court should not adopt an injustice oriented approach in rejecting the application for condonation of delay. In the facts and circumstances of the said case the Hon'ble Supreme Court rejected the plea for condonation of inordinate delay of 10 years 3 months and 29 days in filing appeal under Section 54 of the Land Acquisition Act, whereas in the instant case, such contingency is absent and the delay is only 575 days and by no stretch of imagination, the same cannot be treated as inordinate delay when the nature of suit is taken into consideration. In the facts and circumstances of the case the judgment reported in **BRIJESH KUMAR's** case (3 supra) cited by the learned counsel for the respondents would not render any assistance to the respondents herein.

In **N. BALAKRISHNAN's** case (2 supra) the Hon'ble Supreme Court also observed that it would be a salutary guideline that when Courts condone the delay due to laches on the part of the applicant the Court shall compensate the opposite party for his loss. In the instant case, even though there are some laches on the part of the petitioner herein, this Court is inclined to condone the same taking into consideration the nature of relief sought for by directing the petitioner to pay costs to the opposite party.

For the aforesaid reasons and having regard to the principles laid down in the above referred judgments, the revision petition is allowed and the impugned order dated 2.6.2013 passed by the Court below in I.A.No.290 of 2012 in O.S.No.7 of 2008 is set aside and consequently the said I.A.No.290 of 2012 stands allowed subject to petitioner/plaintiff depositing into the Court below a sum of Rs.7,500/- (Rupees seven thousand five hundred only), payable to the respondents herein, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents herein are permitted to withdraw the same. It is also made clear that in the event of non-adherence to the said condition the order dated 2.6.2013 passed by the court below which is impugned in the present revision shall automatically stand revived.

Accordingly, the Civil Revision Petition is allowed.

JUSTICE A.V. SESA SAI

Kk/Dt: 25.3.2015

