

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition No.2047 of 2015

ORDER:

The petitioner/defendant No.4 seeks to set aside the order dated 09.02.2015 in I.A.No.381 of 2014 in unnumbered Appeal Suit No..... of 2014 passed by learned Principal District Judge, Srikakulam dismissing the application filed under Section 5 of Limitation Act to condone the delay of 789 in preferring the appeal against the preliminary decree in O.S.No.59 of 2006 passed by Junior Civil Judge, Amadalavalasa.

2) The petitioner who is the fourth defendant and other defendants suffered preliminary decree in a partition suit. Aggrieved, it appears the petitioner/fourth defendant filed an appeal with a delay of 789 days in the Court of Principal District Judge, Srikakulam and so, he filed I.A.No.381 of 2014 to condone the delay submitting the explanation for the delay to the effect that he was suffering from Hypertension and Asthma and he could not meet his counsel within time and hence inevitable delay was occurred.

a) The first respondent/plaintiff vehemently opposed the said petition on the contention that subsequent to the preliminary decree dated 31.10.2011 he filed final decree petition I.A.No.204 of 2012 before the trial Court on 22.06.2012 for appointment of Commissioner to ascertain mesne profits and to divide the suit property into 5 equal shares and in the said

petition the present petitioner appeared and filed his counter on 18.02.2013 and contested the said petition and therefore, his plea that he was suffering from Hypertension and Asthma is false.

b) The above contention was found favour with learned Principal District Judge who observed that though the medical certificates said to be issued by Dr.M.Chandra Sekhar Naidu show that petitioner was advised rest and treatment but they were silent that petitioner was unable to move from bed and so from mere taking rest and treatment it cannot be said he was prevented to prefer the appeal particularly when he participated in final decree proceedings and filed counter and contested the matter. With those observations the Principal District Judge dismissed the petition.

Hence, the CRP.

3) Heard both sides.

4) The submission of learned counsel for petitioner is that in construing sufficient cause under Section 5 of Limitation Act, the Court shall not be pedantic in its approach so as to stifle the legitimate right of a party to contest the matter on merits. He would submit that in the instant case the appellate Court erred in rejecting the explanation offered by the petitioner stating that he was suffering from Hypertension and Asthma.

5) Per contra, learned counsel for respondent No.1/plaintiff opposed the petition on the submission that the petitioner very

much contested the parallel proceedings in final decree petition during the relevant period and therefore, his explanation that he was suffering from Hypertension and Asthma was rightly disbelieved by the appellate Court.

6) The point for determination in this revision petition is:

“Whether the petitioner showed sufficient cause to condone the delay of 789 days in preferring the appeal?”

7) **POINT:** The concept of term “sufficient cause” employed in Section 5 of Limitation Act was subjected to interpretation by the Apex Court and various High Courts umpteen times in various decisions. To converge the substance:

- a) Ordinately a litigant does not stand to benefit by lodging an appeal late and 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.
- b) The length of delay is no matter. Acceptability of explanation basing on the *bona fides* is the only criteria.

So, the above principles would show that the Court must not be pedantic in its approach in deciding delay condonation petitions and shall not dismiss them on the mere ground that delay was too long. The criteria for acceptance or rejection of

explanation for the delay rests on the *bona fides* of the factual explanation offered by the petitioner. If the reason strikes the conscience of the Court and convinces that any person in petitioner's position would inevitably have caused the delay shown in the petition, the Courts have to consider the application with empathy and sympathy.

8) In the light of above principles it has now to be seen whether the petitioner explained sufficient cause for the delay. From the observation of the District Judge, the medical certificates only suggest rest and treatment but they do not reveal petitioner was unable to move from the bed. Therefore, it cannot be said that petitioner was totally incapacitated to file the appeal within time. He was very much able to contest the parallel proceedings in final decree petition by engaging counsel. Therefore, it must be said there are no *bona fides* in the explanation offered by the petitioner. Though liberal approach is required, it shall not be extravagancy.

9) In the result, there are no merits in the C.R.P and accordingly, it is dismissed by confirming the order in I.A.No.381 of 2014 in unnumbered Appeal Suit No..... of 2014 passed by learned Principal District Judge, Srikakulam.

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

U. DURGA PRASAD RAO, J

Date: 16.07.2015

Note: L.R Copy to be marked: Yes/ No
Murthy