

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.2665 of 2014

ORDER :

This Revision is filed under Section 115 C.P.C. challenging the order dt.02.06.2014 in I.A.No.721 of 2012 in O.S.No.95 of 2012 on the file of I Additional District Judge, Visakhapatnam.

2. The petitioners herein are defendants in the above suit.

3. The said suit was filed by respondents against petitioners for recovery of money.

4. The petitioners did engage an Advocate, but did not file written statement. Therefore, they were set *ex parte*, and the suit was decreed *ex parte* on 09.07.2012.

5. On 17.09.2012, petitioners filed I.A.No.721 of 2012 under Section 5 of the Limitation Act, 1963 to condone the delay of (40) days in filing the application to set aside the *ex parte* decree dt.09.07.2012 in O.S.No.95 of 2012, along with another application under Order 9 Rule 13 C.P.C.

6. In the affidavit filed in support of the said application, the petitioners contended that although they engaged an Advocate, on account of old age and

financial problems, the 2nd petitioner was forced to close his office in the hotel; that his health was also affected; that the counsel engaged by him did not inform the status of the case; that petitioners approached the present Advocate who informed about the fate of the case on 14.09.2012, and on 17.09.2012 this application has been filed.

7. No counter was filed by the respondent.

8. By order dt.02.06.2014, the Court below dismissed I.A.No.721 of 2012. It held that condonation of delay by setting aside *e x parte* decree would result in washing away the rights accrued to respondent and subject her to fresh round of litigation, and since the respondent is aged, i.e., more than 70 years, the delay in seeking to set aside the *e x parte* decree, cannot be condoned.

9. Challenging the same, the present Revision is filed.

10. Heard Smt. G. Jyothieshwar, counsel for petitioners; and Sri Rajesh Maddy, counsel for respondent.

11. The counsel for petitioners contended that the petitioners, on account of financial problems and ill-health, did not take steps to file a written statement within the time permitted by law, and the counsel engaged by them

initially did not inform them about the status of the case; and in any event, since the application for condonation of delay in seeking to set aside the *ex parte* decree had been filed within a very short time of forty (40) days, the Court below should have condoned the delay instead of dismissing the application; and the mere fact that respondent is a senior citizen is no ground to refuse to condone delay in seeking to set aside the *ex parte* decree, particularly when the delay is not an unduly long delay.

12. On the other hand, the counsel for respondent refuted the above contentions and supported the order passed by the Court below.

13. It is settled law that the words 'sufficient cause' occurring in Section 5 of the Limitation Act, 1963 should be liberally interpreted and length of delay is no matter, but acceptability of the explanation is only the criteria. The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time limit for approaching the court in different situations is not because on the expiry of such time, a bad cause would transform into a good cause. Rules of limitation are not meant to penalise the rights of parties and they are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. There is no presumption that delay in approaching the Court is

always deliberate.

14. In **N. Balakrishnan v. M. Krishnamurthy**^[1], the Supreme Court has held that in every case of delay there can be some lapse on the part of the litigant concerned, but that alone is not enough to turn down his plea and to shut the door against him. It observed that if the explanation does not smack of *mala fides* or is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. It observed that while condoning the delay, the Court should not forget the opposite party altogether, that he too would have incurred quite a large litigation expenses and he can be compensated for his loss adequately.

15. In the present case, according to petitioners, on account of financial problems and ill-health of 2nd petitioner steps could not be taken to file the written statement in time leading to the passing of an *ex parte* decree against petitioners. Merely because the respondent is a senior citizen, it cannot be said that the Court is disabled from condoning the short delay of forty (40) days in filing the application to set aside the *ex parte* decree.

16. In this view of the matter, I am of the opinion that the order passed by the Court below cannot be sustained.

17. The Civil Revision Petition is allowed and the order dt.02.06.2014 in I.A.No.721 of 2012 in O.S.No.95 of 2012 on the file of I Additional District Judge, Visakhapatnam is set aside; and the said I.A. is allowed on condition of petitioners depositing a sum of Rs.1000/- to the credit of the said suit within a period of four (04) weeks from the date of receipt of a copy of this order, and on such deposit, the respondent is permitted to withdraw the same without furnishing security; and the application filed under Order 9 Rule 13 C.P.C. shall also consequently stand allowed. In default of compliance with the condition imposed in this Order, this Revision shall stand dismissed.

18. If costs are paid in time, the suit O.S.No.95 of 2012 shall stand restored to the file of the I Additional District Judge, Visakhapatnam; and the said Court is directed to decide the suit on merits as expeditiously as possible keeping in view that parties on both sides are senior citizens, preferably within a period of six (06) months from the date of receipt of a copy of this order. Both parties have undertaken to extent full co-operation for early disposal of the suit.

19. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 03.09.2015

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[\[1\]](#) (1998) 7 SCC 123