

HON'BLE SRI JUSTICE R.KANTHA RAO
C.R.P.No.5842 OF 2009

ORDER

This Civil Revision Petition is directed against order dated 7.9.2009 passed in I.A.No.1596 of 2008 in O.S.No.190 of 2001 by the Junior Civil Judge, Medchal, Ranga Reddy District.

The revision petitioner herein is the plaintiff. He filed O.S.No.190 of 2001 for recovery of possession and cancellation of registered sale deed dated 21.05.2001, under which defendant No.9 purchased the property from defendants 1 to 8. After settlement of issues, the suit was posted for trial and on 31.01.2007, the suit was dismissed for default. Thereafter, the petitioner filed an application to set aside the dismissal order and to condone the delay of 503 days in filing restoration petition.

Before the trial Court, it is submitted by the petitioner that in June 2007, he was hospitalized and subsequently, he met with an accident and suffered fracture injuries, due to which he was

unable to contact his counsel till June, 2007. Immediately, after coming to know about the dismissal of the suit, he instructed his counsel to take steps for restoration of the suit.

Respondent No.9 contested the petition contending that the petitioner did not file any medical records in support of his contention and that he has to explain each days delay in filing the restoration petition.

The trial Court having gone through the rival contentions and upon perusing the documents filed, took the view that the petitioner failed to explain each day's delay and that Exs.P1 to P11 submitted by him were no way helpful to him and Exs.P3 and P4-Medical prescriptions do not show that the petitioner was hospitalized as an inpatient and that the petitioner failed to produce the documents showing that he fell seriously ill and also met with an accident wherein he received fracture and consequently dismissed the petition.

Learned counsel appearing for the petitioner submits that the petitioner has suffered serious ailment in June 2007 and during the relevant period, he was hospitalized. Some

documents filed by the petitioner relate to the period during which the suit was dismissed for default. However, the period subsequent thereto remained unanswered.

Even though the petitioner placed on record some evidence showing the reason that he met with an accident during the relevant period, the trial Court dismissed the petition on the ground that the petitioner failed to explain each day's delay. The trial Court indulged in meticulous examination of the documents filed by the petitioner without taking into consideration the basic aspects of the case. From the documents filed by the petitioner, it is obvious that the petitioner was hospitalized and was unwell during the relevant period and he received grievous injuries in the accident.

In this context, it would be relevant to refer to the judgment of the Apex Court in *Collector, Land Acquisition, Anantnag and anr v Mst. Katiji and ors*^[1], wherein it is held as under:

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

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.

“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.

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.

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

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 the instant case also, having regard to the grounds urged by the petitioner in this petition and also documentary evidence adduced by him, the trial Court ought to have afforded an opportunity to contest the case on

merits in stead of adopting a hyper technical approach for dismissing the petition. However, there is inordinate delay in filing the application under Order 9 Rule 9 by the petitioner to condone the delay of 503 days in filing the petition for restoration. Therefore, the petition can be allowed on imposing certain costs.

Consequently, the order passed by the trial Court dated 7.9.2009 in I.A.No.1596 of 2008 in O.S.No.190 of 2001 is set aside. The Civil Revision Petition is allowed on condition of payment of costs of Rs.5,000/- to the defendant No.9 within a period of four weeks from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE R.KANTHA RAO

03rd December, 2015

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^[1] AIR 1987 SC 1353