

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Civil Revision Petition No.2647 of 2015

Between:

Majji Somulu @ Swamy naidu Petitioner/Appellant

And

Majji Nagaraju @ Nagesh

and three others

...

Respondents/Respondents

DATE OF JUDGMENT PRONOUNCED: 16.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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! Counsel for Petitioner : Sri Suresh Kumar Pusarla

^ Counsel for Respondent : --

< Gist:

> Head Note:

? Cases referred:

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition No.2647 of 2015

ORDER:

The petitioner/defendant No.1 seeks to set aside the order dt:09.02.2015 in I.A.No.292 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 first defendant and other defendants suffered preliminary decree in a partition suit. Aggrieved, it appears the petitioner/ first 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.292 of 2014 to

condone the delay submitting the explanation for the delay to the effect that he went to Chennai to eke-out his livelihood and stayed there 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 01.02.2013 and contested the said petition and therefore, his plea that he was at Chennai at the relevant period to eke-out his livelihood is false.

b) The above contention was found favour with learned Principal District Judge who held that there were no *bona fides* on the part of petitioner and ultimately 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

migrated to Chennai in search of his livelihood.

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 migrated to Chennai for his livelihood 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. Admittedly, the petitioner and other defendants suffered preliminary decree. As well pointed out by the counsel for respondent No.1, the petitioner participated and contested the final decree proceedings in I.A.No.204 of 2012. That being so, it is hard to digest his explanation that on account of migrating to Chennai in search of his livelihood he could not meet to counsel within time and failed to file the appeal. His very participation in the final decree proceedings exposes fallacy of his explanation. Even assuming for argument sake that he was in Chennai during the relevant period on account of employment, when he found time to meet the counsel and contest the final decree proceedings, there was no reason he could not file appeal which is more important an exercise in time. 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.292 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