

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.1619 of 2014

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ORDER:

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This Civil Revision Petition is filed challenging the order dt.01-04-2014 in I.A.No.2785 of 2012 in O.S.No.50 of 2006 of the I Additional District Judge, Ranga Reddy at L.B. Nagar, Hyderabad.

2. The petitioners herein are plaintiffs in the above suit. They filed the suit against respondents for specific performance of an agreement of sale dt.26-02-2003 under which it was alleged that respondents had agreed to sell an extent of Ac.2.00 in Sy.Nos.83 and 84 situated at Boduppall village, Ghatkesar Mandal, Ranga Reddy District in favour of petitioners.
3. Written statement was filed opposing the suit claim.
4. The matter was coming up for trial and had been posted to 07-06-2012 for trial. On that day, the petitioners were not present and there was also no representation on their behalf. So the matter was posted to 13-06-2012 as a last chance. On that day also, there was no representation from the side of petitioners and the suit came to be dismissed for default.
5. Petitioners then filed I.A.No.2785 of 2012 under Section 5 of the Limitation Act, 1963 (for short "the Act") to condone the delay of 163 days in filing petition to restore the suit and another application under Order IX Rule 9 C.P.C. to set aside the order dismissing the suit for default on 13-06-2012.

6. In the affidavit filed in support of the said application, the petitioners contended that 1st petitioner was entrusted with the pursuit of the suit and also to contact the counsel, but he happened to go out of station on account of his business avocation and so he could not contact the petitioners' counsel as the latter had also changed his address. They contended that on 22-12-2012 the 1st petitioner was able to find the address of their counsel; that he then contacted him; and came to know about the dismissal of the suit for default on 13-06-2012. The petitioners claimed that the said Advocate told them that he was ill on 13-06-2012 and did not attend the Court and his junior colleague wrongly noted the date of hearing and as such there was no representation on 13-06-2012. It was contended that the failure to lead evidence on 13-06-2012 is not willful or wanton and the delay of 163 days in filing the petition to restore the suit, be condoned.
7. Counter affidavit was filed by respondents opposing the condonation of delay. It was contended that the allegations made by petitioners are not true and the application seeking condonation of delay is time barred. It was also contended that no proof of change of address of the counsel was filed in the form of sworn statement of the counsel and that the docket of the Court proves that the case of petitioners is false.
8. By order dt.01-04-2014, the Court below dismissed I.A.No.2785 of 2012. It held that the docket of the suit indicates that on 18-04-2012 the petitioners were called absent and there was no representation and so the matter was posted to 07-06-2012 finally for trial; again on 07-06-2012 petitioners were called

absent and there was no representation; and thereby the matter was posted to

13-06-2012 as a last chance; and on that day since there was no representation on behalf of petitioners, the suit was dismissed for default. It further held that the reasons for condonation of delay given by petitioners in the affidavit filed in support of I.A.No.2785 of 2012 cannot be accepted. It held that it was not the 1st petitioner alone who was a party in the suit and even if he gone out of station, the other petitioners should have represented the matter through their counsel and no reason was assigned why other petitioners did not approach their counsel. It held also that no affidavit of the Senior Counsel that he could not attend the Court on 13-06-2012 because of his illness was filed, and no affidavit of the junior counsel of petitioners was also filed stating that he was busy engaged in other Courts, and therefore could not attend the case of petitioners. It further held that even if the counsel for petitioners was sick on 13-06-2012, the petitioners should have filed the application for restoration of the suit within 30 days from the date of dismissal of the suit. It observed that petitioners have deliberately allowed the time to lapse and after so much of time, the petitioners had come forward with a petition to condone the delay without cogent reasons.

9. Challenging the same, this Revision is filed.
10. Learned counsel for petitioners Sri Vedula Srinivas contended that the Court below erred in dismissing the application under Section 5 of the Act for condoning the delay of 163 days in filing the petition to set aside the order dismissing the suit for default

on 13-06-2012. He pointed out that 1st petitioner, who was pursuing the suit proceedings, could not contact his counsel because he went out of station due to his business avocation and also could not contact their counsel, who had changed his address. He contended that on

22-12-2012 he could find the address of the counsel and contacted him, that the said counsel told him that he fell sick on that day and did not attend the Court, because of which the suit was dismissed for default. He also contended that the junior colleague of the Advocate informed him that he wrongly noted the date of hearing and therefore did not represent the matter on 13-06-2012. He therefore contended that the failure of petitioners to lead evidence was not willful or wanton but on account of the above reasons and the Court below ought to have liberally considered the issue instead of taking a hyper- technical view of the matter. He relied upon the decision of Supreme Court in **S. Ganesharaju (D) through L.Rs. and another Vs. Narasamma (D) through L.Rs. and Others, Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors. and P.K. Ramachandran Vs. State of Kerala and another.**

11. The learned counsel for respondents Sri K.Pandu Ranga on the other hand, supported the order passed by the Court below and contended that the Court below had rightly dismissed I.A.No.2785 of 2012 taking into account the negligence of petitioners in pursuing the suit and that the petitioners had not made out any case for interference with the said order. He also relied upon the judgment in **Office of the Chief Post Master General and Others Vs. Living Media Limited and Another**

and **S. Ganesharaju** (1 supra) and contended that the petitioners cannot be said to have acted with reasonable diligence and had clearly been negligent and callous in the matter and therefore do not deserve any indulgence.

12. I have noted the submissions of both sides.

13. In **N. Balakrishnan Vs. M.Krishnamurthy**, the Supreme Court interpreted the word “sufficient cause” in Section 5 of the Act. It held that condonation of delay is a matter of discretion of the Court and length of delay is no matter, but acceptability of explanation is the only the criterion. It observed that primary function of a Court is to adjudicate the dispute between the parties and advance substantial justice and time limit fixed for approaching the Court in different in situations is not because of the expiry of such time a bad cause would transform into a good cause. It held that there is no presumption that delay in approaching the Court is always deliberate and words “sufficient cause” according to Section 5 of the Act should receive a liberal construction so as to advance substantial justice. It observed:

“13. 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 quite a large litigation expenses. 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.”

14. In **S. Ganesharaju** (1 supra), this principle was reiterated and it was held that the only guiding principle to be seen is whether the party has acted with reasonable diligence and had not been negligent or callous in prosecution of the matter.

15. In **Office of the Chief Post Master General B** (4 supra) cited by the learned counsel for respondents, the Supreme Court was dealing with delays occurring in matters to which Government or Government bodies were parties where the Departments concerned had no proper explanation for the delay except mentioning various dates. In such circumstances, the Supreme Court observed that condonation of delay is an exception and should not be used as an anticipated benefit to Government departments; and that the law shelters everyone under the same light and should not be swirled for the benefit of a few. This judgment has no application to the present case since no Government body is involved here.

16. In **Esha Bhattacharjee** (2 supra), the Supreme Court held:

"15. From the aforesaid authorities the principles that can broadly be culled out are:

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter

and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

17. Thus, the above decisions indicate that there should be a liberal approach and pragmatic interpretation of the term “sufficient cause” occurring in Section 5 of the Act and to an application for condonation of delay; and that there is a distinction between inordinate delay and delay of short duration of few days. In the former the doctrine of prejudice is attracted whereas in the latter it cannot be attracted.
18. Coming to the present case, admittedly the petitioners engaged a counsel and the counsel did not appear before the Court on 13-06-2012 resulting in dismissal of the suit for default. It may be that previously on 18-04-2012 and 07-06-2012, petitioners’ counsel was not present. The word “sufficient cause” according to Order IX Rule 9 C.P.C. would have the same meaning in Order IX Rule 13 C.P.C. and in the context of Order IX Rule 13 C.P.C. the term “sufficient cause” refers to the day on which absence was made a ground for setting a defendant *ex parte* and cannot be stretched to rely upon the circumstances anterior in time (See **G.P.Srivastava Vs. R.K.Raizada and others**) .
19. Therefore, the fact that the petitioners’ counsel was absent on the earlier date of hearing cannot be a circumstance to dismiss the application for condonation of delay. The reason assigned by the petitioners for their non-appearance on that day was that the petitioner, who was entrusted to pursue the case, had gone out of station; that the counsel had also changed his address and the counsel had informed the petitioners in December, 2012 that he was ill on 13-06-2012 and his junior colleague had wrongly noted the date

of hearing.

20. Having engaged a counsel, the petitioners cannot be blamed if the counsel fell ill and the junior colleague of the counsel wrongly noted the date of hearing and did not represent before the Court on 13-06-2012.
21. The observations of the Court below that affidavit of the counsel should have been filed, is not correct, because in many situations, counsel would not be willing to give such affidavits fearing that filing such affidavits may lead to proceedings to be initiated against them before the Bar Council or Consumer Court.
22. No doubt, petitioners should have followed up the matter by attending the Court by enquiring into the fate of the suit, but, this lapse, cannot said to be a deliberate inaction or negligence, and the petitioners cannot be punished as observed in **N. Balaksirhnan** (5 supra). The explanation offered by petitioners does not indicate that it is a part of dilatory strategy and that it smacks of any malafides. Therefore, I am of the opinion that the Court below ought to have condoned the said delay and compensated the respondents by way of costs.
23. In this view of the matter, the Civil Revision Petition is allowed and the order dt.01-04-2014 in I.A.No.2785 of 2012 in O.S.No.50 of 2006 of the I Additional District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad is set aside; the said I.A. is allowed on condition of the petitioners depositing costs of Rs.2,000/- (Rupees Two Thousand only) to the credit of the suit within a period of six weeks from the date of receipt of a copy of this order; and on such deposit, the respondents are permitted to

withdraw the same without furnishing any security. In case of non-compliance with this direction, the Civil Revision Petition shall stand dismissed. No costs.

24. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 02-09-2015

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