

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.1088 of 2015

ORDER:

The Respondent in O.P.No.1 of 2012 on the file of the Court of Senior Civil Judge, Huzurabad is the petitioner in the present revision filed under Section 115 of CPC. In the present revision, challenge is to the order dated 10.12.2014 passed by the said Court in I.A.No.602 of 2012.

2. Heard Sri J.Venkateswara Reddy, learned counsel for the petitioner and Sri T.Ramachander Rao, learned counsel for the respondent, apart from perusing the material available on record.

3. The respondent herein filed O.P.No.1 of 2012 on the file of the Court of Senior Civil Judge, Huzurabad against the petitioner herein for a decree of divorce. The learned Senior Civil Judge passed an exparte decree on 29.6.2012. Seeking to set aside the said exparte decree, petitioner herein filed an application under Order IX Rule 13 of CPC. Along with the said application, the petitioner filed the present I.A.No.602 of 2012 under Section 5 of Limitation Act praying for condonation of delay of 39 days in filing application under Order IX Rule 13. The learned Senior Civil Judge by way of order dated 10.12.2014, dismissed the said application. Aggrieved by the said order passed by the learned Senior Civil Judge, the present revision has been filed.

4. It is contended by the learned counsel for the petitioner that the order passed by the learned Senior Civil Judge is erroneous, contrary to law and is opposed to the very spirit and object of provisions of Section 5 of Limitation Act. It is the further contention of the learned counsel that the court below ought to have adopted a liberal approach and ought to have condoned the delay of 39 days. It is further contended that the petitioner herein is residing at Thanda, (8) k.m. away from

Mahabubabad, Warangal District, which is approximately 140 k.m. from Huzurabad Court. It is also the submission of the learned counsel that the petitioner herein is an illiterate woman and belongs to Scheduled Tribe community and she has a school going boy who is prosecuting 6th standard at Mahabubabad. It is also contended that the reasons assigned by the Court below in the impugned order are neither sustainable nor tenable. In support of his submissions/contentions, the learned counsel placed reliance on the judgment of the Apex Court in **N.Balakrishnan v. M.Krishnamurthy**.

5. On the contrary, it is vehemently contended by the learned counsel for the respondent that there is no illegality nor any material infirmity in the order under challenge, as such, the order passed by the learned Judge is not amenable for any correction by this Court under Section 115 of CPC. It is also the contention of the learned counsel that the reasons assigned by the petitioner herein in the affidavit filed in support of the application are not sufficient, as such, the Court below is perfectly justified in dismissing the application filed by the petitioner herein.

6. In the above background, now the issue that falls for consideration before this Court is whether the order passed by the Court below, dismissing the application filed for condonation of delay of 39 days in filing application under Order IX Rule 13 CPC is sustainable and is in accordance with law?

7. The petitioner herein is the wife of respondent and the respondent herein filed O.P.No.1 of 2012 on the file of the court of Senior Civil Judge, Huzurabad under Section 13 of Hindu Marriage Act for a decree of divorce. The learned Senior Civil Judge passed an exparte decree on 29.6.2012. In the affidavit filed in support of I.A.No.602 of 2012, the petitioner herein stated that she had no knowledge of O.P.No.1 of 2012 filed by the respondent, as such, she could not appear before the Court on the date of appearance. The petitioner herein also stated that due to ill-health, she could not approach her counsel within the stipulated time. Resisting the averments in the said affidavit, the respondent herein filed a counter, stating that the petitioner herein did not explain each and every day of delay. The respondent further stated that the petitioner is attending the Court of Additional Judicial Magistrate of

First Class at Mahabubabad, Warangal District since 13.7.2012 in D.V.C.No.2 of 2012.

8. In the instant O.P.No.1 of 2012, the relief sought by the respondent herein is one for decree of divorce. It is to be noted that the petitioner herein is staying at a remote place in Warangal District, whereas the respondent herein filed the present O.P.No.1 of 2012 at Huzurabad, Karimnagar district which is approximately 150 k.m. away from the place where the petitioner is residing along with her son who is prosecuting 6th standard at Mahabubabad.

9. It is the settled and well established proposition of law that the Courts are required to be liberal while dealing with the applications filed under Section 5 of Limitation Act for condonation of delay in the absence of any unreasonableness in the conduct of the person applying for. At this juncture, it may be appropriate to refer to the judgment of the Hon'ble Apex Court in *N.Balakrishnan v. M.Krishnamurthy* (1 supra), wherein the Hon'ble Apex Court at paragraphs 13 and 14 held as under:

“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 this case explanation for the delay set up by the appellant was found satisfactory to the trial court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising revisional jurisdiction. Nonetheless, the respondent must be compensated particularly because the appellant has secured a sum of Rs. Fifty thousand from the delinquent advocate through the Consumer Disputes Redressal Forum. We, therefore, allow these appeals and set aside the impugned order by restoring the order passed by the trial court but on a condition that appellant shall pay a sum of Rupee Ten thousand to the respondent (or deposit it in this court) within one month from this date.”

10. As per the above referred judgment, if the explanation offered by the applicant is free of malafides and is not a part of any delay tactics, the Court is supposed to show utmost consideration. In the instant case, the party applying for is a woman with school going son. The relief sought by the respondent herein is a decree for divorce. These factors ought to have taken into consideration by the Court below while dealing with the present application instead of proceeding in hyper-technical manner.

11. For the aforesaid reasons and having regard to the principles laid down in the above referred judgment of the Hon'ble Apex Court and taking into consideration the totality of the circumstances, this revision is allowed, setting aside the orders dated 10.12.2014 passed in I.A.No.602 of 2012 in O.P.No.1 of 2012 on the file of the Senior Civil Judge, Huzurabad and consequently I.A.No.602 of 2012 stands allowed on condition of petitioner paying a sum of Rs.2,000/- to the learned counsel for the respondent before this Court. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 8.4.2015

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Between:

Bhukya Shanti

.. Petitioner

And

Bhukya Ramulu

.. Respondent

