

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

C.R.P.No.4211 of 2014

ORDER:

This Revision Petition is filed challenging the Order dt.24-07-2014 in I.A.No.136 of 2013 in O.S.No.37 of 2009 of the VI Additional Judge, Kakinada.

2. The petitioners herein are defendant Nos.9 to 11 in the above suit. The suit was filed by respondent Nos.1 and 2 herein against the petitioners and others for declaration of their title to certain items of the plaint schedule properties and for recovery of possession thereof, for future profits and for costs.
3. The brother of the petitioners herein was also arrayed as 9th defendant in the suit. The suit was decreed *ex parte* in favour of respondent Nos.1 and 2 on 18-01-2012.
4. I.A.No.136 of 2013 was filed by the petitioners under Section 5 of the Limitation Act, 1963 to condone the delay of 145 days in filing petition under Order IX Rule 13 CPC to set aside the *ex parte* decree. A separate petition under Order IX Rule 9 CPC was also filed.
5. In the affidavit filed in support of this application, the petitioners contended that the 9th defendant was looking after the litigation on behalf of the other petitioners; that the petitioners are under impression that he would continue to look after the suit affairs on behalf of the petitioners; therefore, they did not approach their advocate personally; that recently, the respondent Nos.1 and 2 had proclaimed in the vicinity where the

1st petitioner was residing that they had succeeded in their suit; on 21-05-2012, the 3rd petitioner then contacted her advocate and they came to know about the *ex parte* decree. It is further contended that 9th defendant is living separately and could not approach the family home and inform about the stage of the suit and therefore, the other petitioners who are completely in dark about the suit proceedings could not approach the Court for prosecuting the case.

6. This application was opposed by the respondent Nos.1 and 2. They contended that the address of the petitioners as well as 9th defendant is the same as per the cause title shown in the petition; if the 9th defendant was looking after suit affairs, then he must be presumed to be having knowledge about the *ex parte* decree the moment it is passed; and the affidavit filed by the petitioners did not disclose as to what prevented 9th defendant from attending the Court on 18-01-2012 when the *ex parte* decree was passed. They further contended that 9th defendant is attending Court and having knowledge of the *ex parte* decree and he also joined as a 1st petitioner; so it is incumbent on the petitioners to explain the cause which prevented the 9th defendant from attending Court; and it was immaterial whether the other petitioners who are defendant Nos.10 and 11 approached their counsel or not.

7. By Order dt.24-07-2014, the Court below dismissed I.A.No.136 of 2013. It held that in the affidavit filed along with I.A., there is no whisper that 9th defendant had acted against the interest of the petitioners to cause loss to them and that 9th

defendant was also party to I.A.No.136 of 2013, but he has not filed any affidavit stating reasons for passing *ex parte* decree and his failure in attending Court on the relevant date. It further held that in the cause title, all the petitioners including 9th defendant are residing in the same house and therefore, the allegation that 9th defendant is living separately is false. The Court below also referred to the docket orders passed in the suit and held that the contentions raised by the petitioners are not correct.

8. Questioning the same, this Revision Petition is filed.
9. Learned counsel for the petitioners submits that valuable rights to the immovable property are at stake in the suit; 9th defendant who was looking after affairs on behalf of the sisters who are petitioner Nos.3 and 4 herein had not informed about the stage of the suit to these petitioners for the reasons best known to him and the petitioners cannot be allowed to suffer for his negligence or laches.
10. Learned counsel for respondent Nos.1 and 2 on the other hand contended that the decree in the suit had been executed and possession of the properties has also been delivered to the respondent Nos.1 and 2. He contended that the petitioners have not given the reasonable explanation for the delay in filing the application under Order IX Rule 13 CPC and the Court below was therefore justified in dismissing the same.
11. In **N.Balakrishnan Vs. M.Krishnamurthy**, the Supreme Court held:

“9. It is axiomatic that condonation of delay is a matter of

discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed 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.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always

deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari¹ and State of W.B. v. Administrator, Howrah Municipality².

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 the 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 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.”*

12. Further, the Supreme Court in **S.Ganesharaju Vs. Narasamma** held that expression ‘*sufficient cause*’ as appearing in Section 5 of the Limitation Act, 1963 should be given liberal construction so as to advance substantial justice. It further held that unless respondents are able to show *mala fides* in not approaching the Court within the period of limitation, generally as a normal rule, delay should be condoned. It held that only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. It held that there is no presumption that delay in approaching the court is always deliberate and in fact it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold.

13. In the present case, the plea of the petitioners is that the 9th

defendant who is their brother was looking after the interest of the petitioner Nos.3 and 4 in the suit and he did not inform them about the fact that the suit was decreed *ex parte*. It may be that 9th defendant who is 2nd petitioner herein is also residing with the petitioner Nos.3 and 4 at the same address, but that does not mean that the allegation made by 3rd petitioner against 2nd petitioner has to be ignored. Mere fact that 2nd petitioner/9th defendant is residing with the petitioner Nos.3 and 4 does not imply that the petitioner Nos.3 and 4 had knowledge of the dismissal of the suit. Just because the petitioner Nos.3 and 4 have not made any allegation that 2nd petitioner had acted against their interest and had caused loss to them, the petitioner Nos.3 and 4 cannot be made to suffer. It cannot be said that the petitioner Nos.3 and 4 have acted in any *mala fide* manner in not approaching the Court within limitation. It cannot be said that the petitioner Nos.3 and 4 had not acted with reasonable diligence and had been negligent or callous either.

14. Therefore, I am of the opinion that the interest of justice would be served by condoning the delay of 145 days in filing the application under Order IX Rule 13 CPC subject to the petitioners herein depositing costs of Rs.1000/- (Rupees One thousand only) in the Court below within two weeks from today. On such deposit, the respondent Nos.1 and 2 are entitled to withdraw the same without furnishing any security. Since the application under Order IX Rule 13 appears to have been dismissed on account of the dismissal of I.A.No.136 of 2013, the same shall stand revived and the Court below is directed to pass

orders thereon within four weeks from the date of receipt of a copy of this order.

15. The Civil Revision Petition is allowed with costs as above.
16. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-06-2015

Note:

Issue C.C. in three days.

B/o.

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