

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

CIVIL REVISION PETITION No.4541 of 2015

ORDER:

This revision, filed under Section 115 of the Code of Civil Procedure, challenges the order, dated 17-06-2015 passed by the learned District Judge, Prakasam at Ongole in I.A.No.463 of 2015 in A.S.C.F.R.No.1847 of 2015.

Heard Sri T. Ravi Kumar, learned counsel for the petitioners and Sri K. Keerthi Kiran, learned counsel for the respondents, apart from perusing the material available before this Court.

The petitioners herein instituted O.S.No.715 of 2010 on the file of the Court of the III Addl. Junior Civil Judge, Ongole against the respondents herein for recovery of an amount of Rs.50,000/- towards damages. The learned III Addl. Junior Civil Judge, Ongole by way of judgment, dated 16-04-2014 dismissed the said suit. Aggrieved by the said judgment and decree rendered by the Court of III Addl. Junior Civil Judge, Ongole the petitioners herein preferred Appeal Suit on the file of the Court of the District Judge, Prakasam District at Ongole. Along with the said appeal the petitioners herein also filed an application under Section 5 of the Limitation Act (for short, 'the Act'), seeking condonation of delay of 243 days in filing the appeal.

The 1st respondent herein opposed the said application. The learned District Judge by virtue of an order, dated 17-06-2015, dismissed the said application filed by the petitioners for condonation of delay of 243 days in filing the appeal suit. The said order passed by the learned District Judge is under challenge

in the present revision.

It is contended by the learned counsel for the petitioners that the order passed by the learned District Judge is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Section 5 of the Limitation Act. It is further submitted by the learned counsel that had the contents of the affidavit filed in support of the application been considered from proper perspective, the order impugned in the present revision would not have emanated. It is further submitted that the Court below ought to have allowed the application by taking into consideration the settled proposition of law that the Courts are required to be liberal while dealing with the applications for condonation of delay. It is further submitted that the Court below grossly erred in dismissing the application in view of the reasons assigned in the affidavit filed in support of the application.

In support of his submissions and contentions learned counsel for the petitioners placed reliance on the following judgments:

1. *AIR 1981 Supreme Court 1400 (1).*
2. *AIR 1998 Supreme Court 3222*

Per contra, it is the emphatic submission of learned counsel for the respondents that there is no illegality nor there exists any infirmity in the impugned order, as such, the present revision is not maintainable under Section 115 of the Code of Civil Procedure and the petitioners herein are not entitled for any indulgence of this Court. It is further submitted that the learned District Judge is

perfectly justified in dismissing the application having regard to the conduct of the petitioner. It is also submitted that there are no bonafides on the part of the petitioners in filing the present application and there are no sufficient reasons in the affidavit filed in support of the application filed under Section 5 of the Act.

In the above background, now the points that emerge for consideration in this revision are:

1. *Whether the learned District Judge is justified in dismissing the application filed under Section 5 of the Limitation Act in the facts and circumstances of the case?*
2. *Whether the petitioners are entitled for any indulgence of this Court?*

The information available before this Court manifestly discloses that as against the dismissal of O.S.No.715 of 2010, the petitioners herein preferred Appeal Suit before the learned District Judge, Prakasam under the provisions of Order 41 Rule 1 of the Code of Civil Procedure. Along with the said appeal, the petitioners herein also filed an application under Section 5 of the Act r/w. Order 41 Rule 3 (a) of the Code of Civil Procedure, seeking condonation of delay of 243 days in filing the said appeal.

In the affidavit filed in support of the present application filed under Section 5 of the Act, the petitioners herein stated that their advocate office did not notice about the pronouncement of judgment on 16-04-2014 and subsequently on coming to know of the same, filed copy application and obtained certified copy of the judgment immediately. In the said affidavit the petitioners herein further stated that due to their ill-luck the said record was misplaced in the disposal bundles and after strenuous labour during

Sankranthi Vacation the suit record could be traced out. By offering the said explanation, the petitioners herein sought condonation of delay of 243 days while pleading no willful latches and default on their part. It is submitted by learned counsel for the petitioners that for the fault on the part of the counsel the parties should not incur any loss.

The respondents herein opposed the said application by filing a counter and in the said counter the respondents totally denied all the averments and attributed carelessness on the part of the petitioners. According to the learned counsel for the respondents the reasons offered in the affidavit filed in support of the application are totally in-sufficient, as such, the learned District Judge correctly dismissed the application.

A perusal of the order passed by the learned District Judge shows that the learned Judge dismissed the application principally on the ground of delay and the learned Judge also observed that the petitioners deliberately caused delay even after obtaining the certified copies of the judgment and decree. The above aspects are required to be tested and examined in the light of the judgments cited by the learned counsel for the petitioners.

In case of ***Rafiq and another v. Munshilal and another***^[1], the Hon'ble Apex Court held in paragraph No.3 as under:

"... ... The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter.

However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law."

In case of **N. Balakrishnan v. M. Krishnamurthy**^[2], the Hon'ble Apex Court held in paragraph Nos.12 to 14 as under:

"12. A court knows that refusal to condone delay would result 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 Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749].

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 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 reversional 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 Riderless 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.”

In the light of the principles and parameters laid down by the Hon'ble Apex Court in the above-referred judgments, this Court is of the considered opinion that the learned District Judge ought to have taken a liberal view and ought to have allowed the application.

In the above 2nd cited judgment, the Hon'ble Apex Court held that if the explanation does not smack of malafides or it is not put-forth as part of a dilatory strategy the Court is required to show utmost consideration to the suitor. In the instant case, in the considered opinion of this Court the said contingency does exist.

In view of the above reasons, the Civil Revision Petition is allowed, setting aside the order dated 17-06-2015 passed in I.A.No.463 of 2015 in A.S.C.F.R.No.1847 of 2015. Consequently, I.A.No.463 of 2015 in A.S.C.F.R.No.1847 of 2015 is allowed, condoning the delay of 243 days in filing the appeal, however, subject to payment of costs of Rs.7,500/- (Rupees seven thousand and five hundred only) to the respondents within a period of one month from the date of receipt of a copy of this order. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Civil

Revision Petition shall stand closed.

A.V. SESA SAI, J

February 05, 2016

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

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[\[1\]](#) AIR 1981 Supreme Court 1400 (1)

[\[2\]](#) AIR 1998 Supreme Court 3222