

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4380 of 2015

ORDER:

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This Civil Revision Petition under Section 115 of the Code of Civil Procedure 1908 by the unsuccessful petitioner/defendant is directed against the orders dated 17.11.2014 of the learned Junior Civil Judge, Atmakuru passed in IA.no.32 of 2013 in OS.no.123 of 2011 filed under Section 5 of the Indian Limitation Act requesting to condone the delay of 265 days in filing the application to set aside the *ex parte* decree dated 03.05.2012 passed in the aforementioned suit.

2. I have heard the submissions of the learned counsel for the revision petitioner/defendant ('the defendant', for brevity) and the learned counsel for the respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. To begin with, the case of the defendant in support of the request for condonation of delay, in brief, is this:

The plaintiff filed the suit for a perpetual injunction. After receipt of suit summons, the defendant had approached his advocate, who is a legal practitioner appearing in the Courts at Atmakur. However, the said advocate due to oversight and mistake did not file the Vakalat and failed to enter appearance on behalf of this defendant. This defendant due to oversight and mistake did not contact the said counsel in time to know about the progress in the matter. Therefore, the defendant was set *ex parte* on 20.01.2012. When this defendant recently contacted his counsel, he was informed that he was set *ex parte* and a decree was passed in favour of the plaintiff on 03.05.2012. There are no willful laches on the part of the defendant. In fact he had filed his written statement along with the instant application for condonation of delay. He has got a good defence to defend the suit.

4. The plaintiff had filed counter resisting the application of the

defendant. The contentions of the plaintiff, in brief, are as follows:

The defendant did not give the name of his advocate to whom he has given Vakalat. He did not even give the date on which he was said to have approached the said advocate. His affidavit does not reveal any acceptable ground for condoning the delay of 265 days in filing the application to set aside the *ex parte* decree. Further, his affidavit does not disclose the name of the advocate whom he had approached to know the status of the case. In fact the defendant had filed caveat OP.no.44 of 2011 before the institution of the suit and the trial Court had ordered urgent notice before considering the petition for temporary injunction. The defendant having felt that he has no grounds in his favour in respect of the suit schedule property had voluntarily and wilfully remained *ex parte*. Hence, the *ex parte* decree was passed on 03.05.2012. The application filed belatedly does not contain any acceptable grounds as contemplated under Section 5 of the Limitation Act. The ground attributed by the defendant to the advocate by throwing the blame on an unnamed advocate is a mischievous statement. As such, the request for condonation of delay does not deserve any consideration. The application is filed to drag on the matter and to defeat the just claim of the plaintiff. The petition may be dismissed.

5. On merits, the trial Court had dismissed the petition of the defendant and had refused to condone the delay. Therefore, the aggrieved defendant is before this Court.

6. The learned counsel for the defendant while reiterating the pleaded case of the defendant would contend as follows: "The order impugned is perverse and contrary to law. The Court below ought to have seen that no prejudice would be caused to the plaintiff if the defendant is allowed to put forth his case. The court below ought to have seen that the defendant had shown sufficient cause to the effect that he was prompt in approaching the counsel and giving instructions to appear in the matter. Accordingly, the Court below ought to have observed that for the negligence of the counsel, the defendant cannot be made to suffer. The order of the Court below

dismissing the application without discussing the consequences of such dismissal is not sustainable under law. The court below ought not to have relied upon the version of the plaintiff. The Court below ought to have considered the fact that the defendant need not explain each day's delay, when the *ex parte* decree causes irreparable loss and damage to the defendant. The court below ought to have considered the facts that due to 'Samaikyandhara' agitation the defendant could not contact the advocate as the whole of the advocate community was participating in the agitation at the relevant point of time. The Court below ought to have granted the request of the 1st defendant for condonation of delay and ought to have permitted him to contest the suit on merits."

6.1 The learned counsel for the defendant had relied upon the following decisions: (i) **B. Madhuri Gowd v. B. Damodar Reddy**^[1]; and (ii) **Chilkuri Narsimha v. District Collector, Ranga Reddy District and another**^[2].

7. The learned counsel for the plaintiff while reiterating the pleaded case of the plaintiff and while supporting the orders of the Court below would contend as follows:

The petition for condonation of a long delay is filed in a casual manner. No cause, much less sufficient cause, is shown and no details are urged in the affidavit filed in support of the petition. The defendant had not even stated the name of the advocate whom he had approached and entrusted the matter for entering appearance. The defendant is throwing the blame on an un-named advocate by creating a story to cover up his laches. The very averments in the affidavit are by themselves sufficient to reject the request for condonation of delay. The trial Court has passed a detailed reasoned order having adverted to the correct legal position. No grounds much less valid grounds are urged and made out for allowing the revision. The order impugned does not warrant interference. In the counter there is no pleading about 'Samaikyandhara' agitation and the defendant's inability to contact the advocate. The said contention is false and is invented and

introduced for the first time before this Court without any basis in the pleading urged in the affidavit. The application filed belatedly and in casual manner does not contain any acceptable grounds as contemplated under Section 5 of the Limitation Act.

8. I have bestowed my attention to the facts and given earnest consideration to the submissions. The suit for perpetual injunction filed by the plaintiff was decreed *ex parte*. The defendant is admittedly served with suit summons. He did not either attend before the trial Court personally or enter appearance through a counsel. Therefore, he was set *ex parte*; and, an *ex parte* decree was passed. In the application filed for condonation of delay in seeking to set aside the *ex parte* decree, this Court is not obligated to examine the merits of the defence and also the merits and the sustainability or otherwise of the *ex parte* decree and the judgment passed in the suit. There are also no exceptional circumstances to go into those aspects in this case on hand. If the defendant is aggrieved of the *ex parte* decree and judgment and wanted to challenge the same on merits, he ought to have preferred an appeal assailing the same. He did not do so.

8.1 Now the short question that falls for consideration is – ‘whether valid and sufficient grounds are urged and made out and sufficient cause is shown for condonation of the delay in filing the application for setting aside the *ex parte* decree?’ The case of the defendant and the reasons assigned are - that on receipt of the suit summons, the defendant had approached an advocate and entrusted the matter for entering appearance, but, due to oversight and mistake the said advocate did not file Vakalat and that, therefore, he was set *ex parte* and that later an *ex parte* decree was passed and that the present petition is filed for condonation of delay in seeking to set aside the *ex parte* decree on coming to know of the above said facts on making enquiries with an advocate. As rightly urged on behalf of the plaintiff, the defendant did not state in his affidavit even the name of the advocate whom he had approached and entrusted the matter for entering appearance; but, the defendant is throwing the blame on an un-named advocate by creating a story to cover up his laches. The defendant had barely stated that

recently when he had contacted his advocate to know about the status of the case, his advocate informed him that he was set *ex parte* and an *ex parte* decree was passed on 03.05.2012. In the affidavit of the defendant, it is not stated as to when he had contacted his advocate and when he came to know about the status of the case and the *ex parte* decree passed in the suit. His pleading and submissions do not disclose as to how many days after coming to know about the *ex parte* decree, the instant application for condonation of delay was filed. The present application for condonation of delay was filed on 16.02.2013 before the trial Court though the *ex parte* decree was passed admittedly on 03.05.2012. Thus, the affidavit is bereft of all necessary and material details. As a result, from the pleadings of the defendant it appears that even after the *ex parte* decree, he did not take immediate steps with the required promptitude for filing the application for setting aside the *ex parte* decree and that he had filed the petition casually with vague allegations without pleading the material particulars. The required material details and particulars are neither pleaded nor was a sufficient cause shown for condonation of the long delay. Therefore, the very averments in the affidavit are by themselves sufficient to reject the request for condonation of delay. The statutory provision mandates that while considering the applications for condonation of delay, the applicants are required to show sufficient cause for condonation of such delay. The court cannot condone the delay in a case where the Court concludes that there is no justification for the delay. The discretion has to be exercised within the reasonable bounds known to the law. When the delay is directly a result of negligence or default or inaction of a party, such delay cannot be condoned on mere asking of that party. The expression 'sufficient cause' is a cause for which the defendant could not be blamed. [Vide the decision of the Supreme Court in **Parimal v. Veena**^[3]]. In this decision, it was also held as follows: 'However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion it has to be exercised judiciously.'

8.2 It is apt to now refer to the decisions, which were called in aid by the

defendant. The decision in B. Madhuri Gowd (1st cited) is relied upon in support of the proposition that Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay and that the ideal underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature and that at the same time the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation and that the expression “sufficient cause” used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice and that no hard and fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed that a liberal approach needs to be adopted in such matters so that substantive rights of the parties are not defeated only on the ground of delay. In this cited decision, on facts, the Supreme Court while refusing to condone the delay of 1236 days had held as follows: “In our view the statement made by the respondent about misplacement of the documents by the office of the advocate was vague to the core and the learned Single Judge committed grave error in entertaining the fanciful explanation given for 1236 days’ long delay.” In this decision, the Supreme Court had positively held that the Courts are empowered to condone delay provided that sufficient cause is shown by the applicant. The decision in Chilkuri Narsimha (2nd cited) is relied upon in support of the proposition that the doctrine that every day’s delay be explained in seeking condonation of delay be applied in a rational common sense pragmatic manner. In this cited decision it was held that the power to condone the delay is at the discretion of the Court and that a Superior Court would, ordinarily, not interfere with the exercise of such discretion save in cases where the order suffers from a patent illegality. Hence, both the decisions are more helpful to the plaintiff and do not advance the case of the defendant any further. Having regard to the facts and legal position obtaining it is not possible to accept the vague explanation for the

long delay given by the defendant.

9. Further, it is trite to also note that a reading of the affidavit filed in support of the petition would lay bare that the petition is filed in a casual manner without giving any explanation, much less a valid explanation, and without showing sufficient cause for condonation of the long delay. Having had knowledge of the pendency of the suit, the defendant had failed deliberately to attend before the trial Court on the date of hearing or on other subsequent dates to which the matter was adjourned and had thus allowed the suit to be decreed *ex parte*. In the affidavit filed in support of the petition, necessary ingredients are noticeably absent and the affidavit filed in support of the petition lacks in material details, which are vital for consideration and there is no explanation at all for the long delay from the date of the decree and till the date the application to set aside the *ex parte* decree was filed. In the facts and circumstances of the case, the delay cannot be condoned when the defendant who is seeking condonation of delay had failed to demonstrate that the cause that had prevented him from pursuing the remedy had sprouted before the expiry of limitation and continued and prevented him from taking necessary steps till the date the application is filed. Even when the contentions of the plaintiff were put-forth in the counter, the 1st defendant did not choose to file an affidavit with better particulars and no additional affidavit was sought to be filed after seeking the permission of the Court. When there is no explanation for delay, the defendant cannot be permitted to plead that technical consideration shall not be allowed to outweigh the cause of substantial justice. Such a long delay cannot be condoned in the absence of showing any valid and sufficient cause as required under facts and in law. On a careful analysis of the pleadings of the defendant and the facts and circumstances it is evident that there is no valid explanation for the delay and that sufficient cause was not shown for condonation of delay. Having regard to the facts of the case and the further fact that the suit for perpetual injunction which is of the year 2011 was decreed on 03.05.2012, this Court is of the considered view that the long delay, which is due to deliberate inaction and which is directly a result of negligence or default or inaction of the defendant,

cannot be condoned on mere asking and in the absence of any explanation.

10. Having regard to the reasons, this court finds that the Court below is justified in dismissing the application for condonation of delay and that there is no patent illegality calling for interference.

11. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this revision shall stand closed.

JUSTICE M. SEETHARAMA MURTI

13th June, 2016
Vjl

[\[1\]](#) (2012) 12 SCC 693

[\[2\]](#) 2015 (6) ALT 98

[\[3\]](#) AIR 2011 SUPREME COURT 1150