

THE HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

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CIVIL REVISION PETITION No.4943 OF 2015

ORDER:

This revision is filed under Section 115 of the Code of Civil Procedure, 1908 (for short, 'the code') challenging the order passed by the Senior Civil Judge, Bodhan, in I.A. No.242 of 2015, dated 15.10.2015, whereby the petition filed under Section 5 of the Limitation Act, to condone delay of 766 days in filing the petition for setting aside the *ex parte* decree, is dismissed.

02. For convenience of reference and to avoid confusion, the ranks given to the parties before the trial court will be adopted through out the judgment.

03. The petitioner filed I.A. No.242 of 2015 under Section 5 of Limitation Act to condone delay of 766 days in filing the petition to set aside the *ex parte* order under Rule 13 of Order IX of the Code, alleging that she is an old woman and suffering from several ailments and that she did not receive notice from the Court in O.S. No.27 of 2012, but she received notice in I.A. No.557 of 2013 and engaged an Advocate, Sri S. Raju Patel, who filed vakalath in I.A. No.557 of 2013. It is specifically contended that she requested the said Advocate to enquire and verify the Court record and explain the details, but she could not contact her Advocate, Sri S. Raju Patel, as she was suffering from ill health, thereby, she could not file counter in I.A. No.557 of 2013, consequently she was set *ex parte* in I.A. No.557 of 2013. She came to know about passing *ex parte* decree only when Advocate-Commissioner, Sri Ravinder, came to the Village of the petitioner for dividing the property. Immediately, she approached Sri V. Sangam, Advocate, explained the facts, and then she filed the present petition along with written statement, seeking condonation of delay of 766 days in filing petition to set aside the *ex parte* Decree in I.A. No.557 of 2013. As the petitioner was suffering from ill

health, she could not file the petition and thus prevented by a cause which is beyond her control and prayed to condone delay 766 days in filing the petition under Rule 13 of Order IX of the Code.

04. The respondent filed counter denying the material allegations contending that the petitioner failed to explain each and every day delay in filing the petition to set aside the *ex parte* order and denied the alleged sufferance of the petitioner from ill health and that the trial court afforded sufficient time to contest I.A. No.557 of 2013. Thus, there are no *bonafide* reasons and prayed for dismissal of the petition.

05. The trial court after perusing the reasons dismissed the petition only on the ground that the petitioner did not produce any medical evidence in support of her contention that she was suffering from ill health.

06. Aggrieved by the order passed by the Senior Civil Judge at Bodhan in I.A. No.242 of 2015, the present revision is filed on various grounds mainly contending that the trial court did not consider the explanation offered by the petitioner in proper perspective and instead of taking sympathetic view in view of her ailment, illiteracy and old lady living in a remote Village, the trial court erroneously dismissed the petition and prayed to set aside the Order passed in I.A. No. 242 of 2015 dated 15.10.2015 on the file of the Senior Civil Judge, Bodhan, and condone delay of 766 days in filing the petition to set aside the *ex parte* decree under Rule 13 of Order IX of the Code.

07. The learned counsel for the petitioner contended that the petitioner was aged woman and suffering from various ailments and thereby she could not contact her Advocate, Raju Patel, whom she engaged to defend the petitioner before the trial court and the cause shown by the petitioner preventing her to file petition is beyond her control, prayed to condone delay. Therefore, the trial court erroneously dismissed the petition and prayed to set aside the order in I.A. No.242 of 2015.

08. I heard the learned counsel for the petitioner at length at the stage of admission.

09. As seen from the material available on record the only ground for dismissal of the petition is that the petitioner did not produce any medical record to accept the explanation offered by her, even otherwise she engaged an Advocate in I.A. No.557 of 2013, but he did not contest the petition by filing counter, thus, she was negligent in prosecuting the proceedings and the person who was negligent is not entitled to take advantage of Section 5 of Limitation Act.

10. The present revision is filed under Section 115 of the Code which permits the court to revise the order, call for the records of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto and if the subordinate court appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity. At the same time, the High Court shall not, under this Section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

11. The scope of revision under Section 115 of the Code is limited and this Court can exercise its jurisdiction only under three circumstances.

- a) *to have exercised a jurisdiction not vested in it by law, or*
- b) *to have failed to exercise a jurisdiction so vested, or*
- c) *to have acted in the exercise of its jurisdiction illegally or with the material irregularity.*

12. The petitioner did not bring to my notice about exercise of jurisdiction not vested in it by law by the subordinate court or failure to exercise jurisdiction so vested or exercise of its the jurisdiction illegally or with material irregularity. In the absence of such circumstances, this court cannot exercise its power under Section 115 of the Code to revise the

order passed by the trial court in I.A. No.242 of 2015.

13. The main reason for failure of the petitioner to file petition is that she was suffering from various ailments and thereby she could not contact her Advocate Sri Raju Patel, whom she engaged in I.A. No.557 of 2013 in O.S. No.27 of 2012. In the entire affidavit, the petitioner did not disclose the nature of ailments and whether such ailment prevented her from contacting her Advocate Sri Raju Patel, whom she engaged before the trial court. In the absence of any details of ailments which she had suffered, the medical evidence whatever she produced is of no use and even otherwise, the petitioner did not produce any scrap of paper i.e. medical certificate to prove that she was suffering from any ailment which prevented her from contacting her advocate Sri Raju Patel. In the absence of details of ailments and in the absence of any medical evidence, the trial court has no option except to disbelieve the cause which allegedly prevented her from filing petition under Rule 13 of Order IX of the Code.

14. The law is well settled that the Court cannot adopt pedantic approach while construing the word 'sufficient cause'. The court must adopt liberal approach, that does not mean court can accept the cause whatever shown by the petitioner to condone the delay. However, such liberal approach cannot be used as a weapon to frustrate the legislative intention in incorporating Section 5 of Limitation Act, in other words such liberal approach cannot be stretched to defeat the very object of Section 5 of Limitation Act.

15. In a judgment of the Apex Court in ***Lanka Venkateswarlu (Died) by L.Rs. V. State of A.P. and others***^[1], the Hon'ble Apex Court held as follows:

"We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "*liberal approach*", "*justice oriented approach*", "*substantial justice*" cannot be employed to jettison the substantial law of limitation, especially in cases where the Court concludes that there is no justification for the delay. In our opinion, the

approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any *lis* between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.”

16. In another judgment of the Apex Court in ***P.K. Ramachandran v. State of Kerala and another***^[2], The Hon’ble Apex Court held as follows:

“Law of limitation may harshly affect a particular party, but it has to be applied with all its rigor when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained.”

17. In a judgment of this Court in ***Srinivasa Book Depot, Book Sellers, Nizamabad and others v. Bank of India, Kumargally Branch, Nizamabad***^[3], this Court held as follows:

“It is true that where public funds are involved, the Court should be liberal in condonation of delay. However, it is too difficult to generalize such a proposition and relieve the institutions from the responsibility and obligation to assign reasons. The question of there being liberal or other approach would arise if only there are certain reasons. If no reasons exist, it is too difficult to condone years of delay based on the ground that the affected party is an institution dealing with public funds. Equally important are the rights conferred upon citizens by law.

When the delay of 714 days was found not explained properly even where several factors relevant to the issue such as illness of the advocate, efforts made by the bank, etc., have been raised, it is too difficult to condone the delay of 787 days where such explanation does not exist at all.”

18. In view of the law declared by the Apex Court and other High Courts, it is the duty of the petitioner to show sufficient cause which prevented the petitioner from filing the petition and in the absence of any cause much less sufficient cause, the petition for condone the delay cannot be allowed on sympathetic grounds and the substantive law of limitation cannot be jettisoned on the principle of substantial justice or total justice.

19. Keeping in view of principle of law laid down in the above judgment, I am not in a position to interfere with the order passed by the trial court as the trial court did not exceed its power in exercising the jurisdiction vested on it by law, or failed to exercise the jurisdiction which conferred on it or to have acted in the exercise of its jurisdiction illegally or with material irregularity.

20. Hence, I find no ground warranting interference of this court while exercising the power under Section 115 of the Code with the order passed by the trial court, the revision is deserves to be dismissed.

21. In the result, the revision is dismissed but without costs.

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

M. SATYANARAYANA MURTHY, J

Dt.18.01.2016

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[\[1\]](#) 2011 (1) UPLJ 242 SC

[\[2\]](#) AIR 1998 SC 2276

[\[3\]](#) 2003 (1) ALD 126