

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.2433 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful petitioners/plaintiffs is directed against the orders, dated 11.03.2016, of the learned Junior Civil Judge, Narayanpet, Mahabubnagar District, passed in I.A. No.268 of 2015 in O.S. No.30 of 2007 filed under Section 5 of the Limitation Act, 1980, read with Section 151 of the Code of Civil Procedure, 1908, requesting to condone the delay of 32 days in filing the petition seeking restoration of suit, which was dismissed for default on 01.07.2015.

2. I have heard the submissions of the learned counsel for the petitioners/plaintiffs ('plaintiffs', for brevity) and the learned counsel for the respondents/defendants ('defendants', for brevity). I have perused the material record.

3. The submissions made before this Court, on behalf of the plaintiffs are as under: "The plaintiffs brought the present suit against the defendants for declaration of title and recovery of possession of immovable property. The defendants are resisting the suit. While so, when the suit was posted to 01.07.2015, the 1st plaintiff did not attend before the trial court. On that day, the suit was dismissed for default, on the counsel for the plaintiffs reporting no instructions. Thereafter, when the plaintiffs approached the said counsel, he had returned the case bundle. Therefore, the plaintiffs having engaged another counsel got filed an application seeking to set aside the order of dismissal for default passed in the suit and for restoration of the suit. However, as a delay of 32 days had occasioned in filing the said petition, the aforementioned petition was filed seeking condonation of the said delay. However, the

trial Court had dismissed the said petition. Therefore, the plaintiffs are before this Court.

4. The case of the plaintiffs is that on 01.07.2015, the 1st plaintiff suffered heart pain and was shifted to District Headquarters Hospital, Mahabubnagar, and that the other plaintiffs, in the circumstances, could not inform the said fact to the counsel and that for non-attendance of the 1st plaintiff and non-communication of his inability to attend before the Court, the counsel for the plaintiffs had reported no instructions and that the suit was therefore dismissed for default and that thereafter as the said counsel had returned the case bundle, the plaintiffs were constrained to engage another counsel and file the aforesaid two applications.

5. Per contra, the case of the defendants in their counter and the submissions made on their behalf are as follows:

The suit was earlier dismissed for default and was restored at the request of the plaintiffs. The plaintiffs did not attend before the Court and prosecute their suit despite giving an opportunity by restoring the suit. The suit was again dismissed for default as the plaintiffs failed to attend before the Court and their counsel had reported no instructions. The plaintiffs' said conduct would show that they are negligent and not diligent. The contentions in the supporting affidavit filed by the 1st plaintiff are invented. The intention of the plaintiffs is to drag on the proceedings. The trial Court was right in dismissing the petition of the plaintiffs as no grounds are made out for condonation of the delay.

6. At the hearing, the learned counsel for both the sides made submissions in line with the respective pleadings of the respective parties.

7. A perusal of the order of the Court below discloses that the petition was dismissed mainly for the reason that earlier also, the suit was dismissed for default and was restored at the request of the plaintiffs and yet again, on 01.07.2015, that is, even after three years after the restoration of the suit, the plaintiffs were not ready and the counsel, therefore, had reported no instructions. Thus, as rightly contended the application was dismissed taking into consideration the previous conduct, as well, of the plaintiffs. The learned counsel for the plaintiffs would submit that the plaintiffs have given valid explanation and have shown sufficient cause for condonation of delay and that they had also filed the medical certificate of the 1st plaintiff and that in the circumstances, the Court below ought to have condoned the delay and given an opportunity to the plaintiffs to have their suit decided on merits. The defence of the defendants is that the plaintiffs are not diligent and are dragging on the matter.

8. As per the well settled law, while considering the merits of the application filed for the restoration of the suit that was dismissed for default, the Court has to consider only the valid reason, if any, for non appearance of the plaintiffs on the day the suit was dismissed for default; but, the Court cannot take into consideration the aspects of non appearance of the plaintiffs on the previous dates of adjournments and cannot stretch the matter to cover circumstances which had occurred prior to the date of dismissal of the suit as the said conduct prior to the said date stands over looked and condoned. Nonetheless, the trial Court while considering an application filed for condonation of delay has to examine whether sufficient cause is shown for condonation of delay. As already noted, a medical certificate was produced in support of the

contention of the plaintiffs that the 1st plaintiff had suffered heart pain and was admitted to hospital. The expression 'sufficient cause' is a cause for which the party could not be blamed. [Vide the decision of the Supreme Court in **Parimal v. Veena**¹]. 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.'

9. It is well settled that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. It is well settled principle that expression 'sufficient cause' under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice and what constitutes sufficient cause always depends on the facts and circumstances of a particular case. Hence, the application need not be rejected merely on the ground of inordinate delay, but the test shall be whether sufficient cause is made out for the delay. In the case on hand the delay is not an abnormal delay. Further, this Court is of the considered view that in a suit of this nature, where the substantive rights of the parties are involved in respect of an immovable property, one more opportunity can be given to the plaintiffs. Having regard to the facts and the legal position, this Court is satisfied that sufficient cause is shown and valid grounds are made out for condoning the delay. When the explanation offered is a sufficient cause for condonation of delay, but the delay that deserves to be condoned is a long delay, such delay is generally condoned by imposition of adequate costs as compensation to offset the delay in the hearing and disposal of the case. Therefore, this

¹ AIR 2011 SUPREME COURT 1150

Court considers it appropriate to give the plaintiffs, an opportunity on certain terms to offset the hardship that may be caused to the defendants on account of the delay in the hearing and disposal of the suit. Viewed thus, this Court finds that the order impugned is unsustainable and calls for interference.

10. In the result, the Civil Revision Petition is allowed and the impugned order is set aside. As a sequel, I.A.No.268 of 2015 in O.S.No.30 of 2007 on the file of the Court of the learned Junior Civil Judge, Narayanpet, Mahabubnagar District, is allowed subject to the condition that the plaintiffs shall pay Rs.3,000/- (Rupees three thousand only) as costs to the learned counsel for the defendants before the Court below under a proper receipt, within two weeks from the date of receipt of a copy of this order. On failure on the part of the plaintiffs to pay the costs as aforementioned within the stipulated time, the aforesaid petition shall stand dismissed and the order under revision shall stand revived. It is also needless to mention that on the very same analogy and for reasons alike as are mentioned in this order, the application filed seeking restoration of the suit has also to be allowed. Indeed, the learned counsel for the defendants/respondents herein states no objection for allowing the said petition in view of the instant orders of this Court allowing the application for condonation of delay. Accordingly, this Court holds that on the plaintiffs complying with the directions in this order regarding payment of costs within the stipulated time, the application filed for restoration of the suit shall stand allowed as a sequel. In the event the suit stands restored, the trial Court shall endeavour to dispose of the suit in accordance with the procedure established by law as expeditiously as possible, and in any event not later than three months from the date the suit stands restored to file.

Miscellaneous petitions, if any, pending in this Civil Revision
Petition shall stand closed.

21st July, 2016
Siva

M. Seetharama Murthi, J

