

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4821 of 2016

ORDER:

1) Aggrieved by the order, dated 31.08.2016, passed in I.A.No.892 of 2015 in un-numbered appeal on the file of the III Additional District Judge, Tirupati, wherein an application filed under Order XLI Rule 3-A of C.P.C. to condone the delay of 734 days in preferring appeal was rejected, present Civil Revision Petition is filed under Section 115 of C.P.C.

2) The facts in issue are as under:

3) The first respondent/ plaintiff filed O.S.No.189 of 2012 on the file of the Senior Civil Judge, Srikalahasti seeking partition of the suit schedule property into two equal shares by metes and bounds by taking good and bad qualities into consideration and to allot one such share to the plaintiff and put him in separate possession of the same. An exparte preliminary decree came to be passed on 18.06.2013. After passing preliminary decree, the plaintiff filed I.A.No.1338 of 2013 seeking to pass a final decree. On coming to know about the same, the petitioner, who is the second defendant in the suit filed I.A.No.427 of 2013, to condone the delay in filing the application under Order IX Rule 13 of C.P.C. The said petition was dismissed on 20.09.2014. Aggrieved by the same, the petitioner preferred a revision before this Court vide C.R.P.No.3347 of 2014, which was withdrawn on 24.06.2015 with a liberty to avail the appropriate remedy available under law. After securing all the

documents and certified copies, the petitioner herein, who is a rustic and deserted lady, is said to have been filed an appeal challenging the exparte preliminary decree. It is stated that in the process there was a delay of 734 days in preferring the appeal. It is the case of the petitioner that the delay was neither wilful nor wanton and if the said delay is not condoned and the appeal is not numbered, the petitioner would be put to an irreparable loss and her right over the property would be defeated.

4) A counter came to be filed by the plaintiff opposing the same. It is submitted that no reasons are given explaining the delay in filing the appeal, though she was aware about the proceedings.

5) After considering the rival submissions made, the trial Court dismissed the I.A. Challenging the same the present revision is filed.

6) Learned counsel for the petitioner mainly submits that the delay in filing the revision is neither wilful nor wanton. It is contended that the petitioner was un-well for some time as she was suffering with jaundice as such could not prefer the appeal in time. It is the case of the petitioner that she came to know about the pendency of the suit proceedings only when the advocate-commissioner came to the suit schedule property.

7) Learned counsel for the plaintiff opposed the same contending that no material has been placed before the Court to show the circumstances which lead to the delay in filing the appeal.

8) In *State of Bihar and others v. Kameshwar Prasad Singh and another*¹ the Apex Court held as under:

“11. Power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing of matter on merits. This court in *Collector, Land Acquisition, Anantnag v. Mst. Katiji*² held that the expression ‘sufficient cause’ employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of Courts. It was further observed that a liberal approach is adopted on principle as it is realised that:

- 1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.
- 2) Refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
- 3) ‘Every day’s delay must be explained’ does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? The doctrine must be applied in a rational common sense pragmatic manner.
- 4) When substantial justice and technical considerations are pitted against each other,

¹ (2000) 9 SCC 94

² (1987) ILLJ, 500 SC

cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of *mala fides*. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6) It must be grasped that judicial is inspected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

9) In [State of Nagaland v. Lipok Ao and others](#)³ the Apex Court held as under:

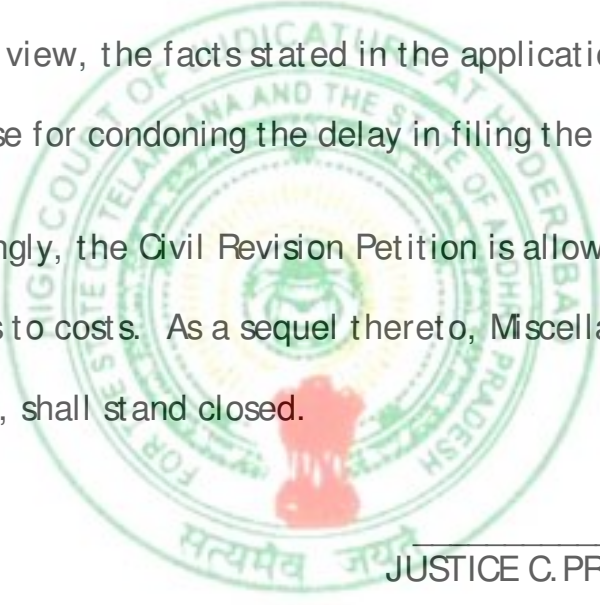
“Proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. What constitutes sufficient cause cannot be laid down by hard-and-fast rule section.”

10) From the judgments of the Apex Court referred to above, it is clear that delay can be condoned if the circumstances indicate that meritorious matter would be thrown out and the cause of justice would be defeated, if the delay is not condoned. The Apex Court has categorically held that even if the delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

³ (2005) 3 SCJ 558

11) As seen from the record, against an order rejecting to set aside an ex parte decree order passed in I.A.No.427 of 2013, the petitioner herein filed C.R.P.No.3347 of 2014 which was withdrawn permitting the petitioner to prefer an appeal. The record also discloses that I.A.No.1338 of 2013 came to be filed for passing of final decree by appointing an advocate-commissioner. On 24.01.2016 the advocate-commissioner made the division of the plaint schedule property into two equal shares and execution of decree was partly completed without knowledge of the petitioner herein. In my view, the facts stated in the application do constitute sufficient cause for condoning the delay in filing the appeal.

12) Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.



JUSTICE C. PRAVEEN KUMAR

29.12.2016

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