THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2706 of 2014

ORDER:

The unsuccessful petitioner/2nd defendant had filed this revision under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for brevity) assailing the order dated 23.06.2014 of the learned I Additional District Judge, Chittoor passed in I.A.no.261 of 2014 in O.S.no.57 of 2012 filed under Section 5 of the Limitation Act requesting to condone delay of (194) days in filing the petition to set aside the *ex parte* decree dated 10.07.2013 passed in the aforementioned suit.

2. I have heard the learned counsel for the petitioner/2nd defendant ('the 2nd defendant', for brevity) and the learned counsel for the respondents/ defendants ('the defendants', for brevity). I have perused the material record.

3. To begin with, it is necessary to state the pleadings of the parties.

The case of the 2nd defendant, in support of the aforementioned request, in brief, is as follows:

P.Govindaraju and Kalyani are the parents of the 2nd defendant. The 1st defendant-P.Panneer Selvam is the brother of the 2nd defendant. G.Haripriya-3rd defendant is the sister of defendants 1 and 2. The father of defendants 1 to 3 used to work as Assistant Engineer in Zillaparishad, Chittoor. The mother of defendants 1 to 3 purchased a house bearing no.20-10-26 (old), 20-256 (new). She had no other immovable properties. The father of the defendants performed the marriage of the 3rd defendant in a grand manner in the year 1992 and provided Sthridhana to her. On the unfortunate death of the father of the defendants 1 to 3 in the year 1999, while he was in service, there was a family settlement between the defendants 1 and 2, who are brothers, in the presence of elders of the family. At the time of the said settlement, it was agreed that the job under compassionate appointment scheme shall be secured by the elder brother-1st defendant and that the house property shall be given to the 2nd defendant/petitioner herein after the demise of the mother of the defendants 1 to 3. Having accepted the said settlement, the 1st defendant had made the 2nd defendant to believe that he will not create any hurdles in the 2nd defendant getting the house property of the mother as he had secured a job under compassionate appointment scheme on the death of the defendants' father while in service. He is presently working as Revenue Inspector in the office of the Tahasildar, Chittoor Mandal and getting a salary of more than Rs.25,000/-. During the last days of the mother of the defendants 1 to 3, she had suffered cardiac disease. To meet her medical expenses and binding necessities and to discharge her pressing debts, she had sold a portion of the house property to one C.K.Parimala under a registered sale deed dated 09.12.2010. Thereafter, this petitioner/2nd defendant had purchased the said property under a registered sale deed dated 18.02.2012 from the said Parimala for a valuable consideration. The mother of the defendants 1 to 3 died on 30.11.2012. The 1st defendant neglected the mother during her last days. With a view to knock away the properties of the mother and that of the 2nd defendant, he had created several litigations. He had fabricated a pronote and got filed a suit. The plaintiff in O.S.no.303 of 2011 is the brother of his father-in-law. The 1st defendant had also got filed through his friend, K.Ravi Kumar, a creditor's I.P.14 of 2012 on the file of the Court of the learned Additional Senior Civil Judge, Chittoor against the properties of the mother of the defendants and the 2nd defendant. He had also set up one of his friends by name S.Sridhar, i.e., the plaintiff herein and got filed the instant suit O.S.No.57 of 2012 on the file of the Court of the I Additional District Judge, Chittoor for specific performance of an agreement of sale in respect of the house property. This defendant was initially defending all the three proceedings by engaging only one advocate. Thus, the 1st defendant is the root cause of all the litigations and he is investing money for the conduct of the said litigations to knock away the property and deprive the 2nd defendant of his legitimate rights over the property. This petitioner/2nd defendant had placed before the elders, the details of litigations and explained his difficulties to them. They had conducted a mediation on behalf of the petitioner/2nd defendant. Before the said family elders, the 1st defendant had confessed about the creation of litigations to knock away the properties. Then, the elders advised the 1st defendant not to create litigations and asked him to 'not press' all the litigations as he is having a job and is financially affluent. The 1st defendant had promised that he will take steps for withdrawal of the litigations. Unfortunately, this petitioner/2nd defendant suffered from jaundice and was taking treatment. Hence, he could not prosecute the defence in the above suit and he was under the impression that as per the advice of the elders at the time of mediation, his brother/1st defendant has got 'not pressed' all the three suits through his henchmen. While so, the petitioner/2nd defendant received notice in E.P.no.136 of 2013 pursuant to an *ex parte* decree. Then, the petitioner/2nd defendant came to know that he was set *ex parte* in all the three litigations and that all the three litigations were decreed by setting him *ex parte.* Then, the petitioner/2nd defendant realized the fraud played by his brother. On enquiry, he came to know that the plaintiff in the present suit did not 'not press' the instant suit and had obtained an *ex parte* decree on 10.07.2013. The absence of the 2nd defendant and the non-filing of his written statement on the hearing date was not due to wilful and wanton reasons, but for the *bona fide* reasons stated above. The petitioner/2nd defendant has got fair chance of success in the suit. Further, heavy stakes are involved in the matter. If the petitioner/2nd defendant is not permitted to prosecute his defence, he would be put to severe hardship and loss. Hence, a petition is filed to set aside the *ex parte* decree. As the delay had occasioned in filing the said petition, the present application is filed for condonation of the said delay.

4. *Per contra*, the case of the plaintiff, in brief, is this:

The material allegations in the affidavit filed in support of the petition are false. The mother of the defendants incurred several debts during her life time. Being unable to repay the debts, she had executed an agreement of sale dated 05.05.2010 for a consideration of Rs.12,00,000/- having agreed to sell the suit schedule property as she is in need of money for discharging her debts. She had received Rs.7,00,000/- towards advance and further agreed to receive the balance amount at the time of execution of the sale deed. However, she died on 30.11.2012 leaving behind, her two sons and daughter, who are defendants 1 to 3. Therefore, the plaintiff is constrained to file the suit for specific performance. Prior to the institution of the suit, a notice was issued by the plaintiff. The plaintiff is always expressing his readiness and willingness and demanding the defendants to execute the sale deed. However, the defendants failed to comply with the demand in the notice. This petitioner/2nd defendant engaged a counsel by name, V.Venkatachalam in the present suit and had taken time for filing his written statement. As none of the defendants had filed written statements, they were set *ex parte* on 18.03.2013. Subsequently, the suit was decreed on 10.07.2013. In O.S.no.303 of 2011, the petitioner/2nd defendant herein who is the 3rd defendant therein engaged one G.Ramesh as his counsel. He did not contest the suit by filing written statement and that suit was also decreed *ex parte* on 01.12.2013. E.P.no.136 of 2013 is filed and the JDrs 2 and 3 were set *ex parte*. The petitioner/2nd defendant herein did not later file counter and was set *ex parte* and thereafter, EP was allowed. Even in the creditor's IP, the petitioner/2nd defendant herein made personal appearance and engaged G.Ramesh as his counsel and sought time for filing counter. He had later remained *ex parte*. Therefore, custody of the property was taken over by the Official Receiver. The allegations that the petitioner/2nd defendant suffered from jaundice and therefore, he could not attend before the Court and file his written statement are false and invented. The petitioner/2nd defendant suffered jaundice for a period of one year is untenable and unbelievable. During that period, he had attended to the other Court cases personally and sought time for filing counters. Therefore, the averment that he had suffered from jaundice is false. There are no *bona fides* on the part of the petitioner in filing the petition. After the execution petition is filed, the defendants 1 and 3 had come forward to execute the sale deed and had executed the sale deed. The present petition is filed by the petitioner/2nd defendant to stall the proceedings and delay the matters. The petition is liable for dismissal.

5. At the time of hearing, no oral and documentary evidence was adduced on either side. Further, from a reading of the order of the Court below, it appears that the petitioner/2nd defendant had produced a medical certificate in support of his contention that he had suffered from jaundice from 04.02.2013 to 13.02.2014.

6. On merits and by the order impugned, the trial Court had dismissed the petition.

7. The learned counsel for the petitioner/2nd defendant while reiterating the case pleaded by the petitioner/2nd defendant would submit as follows:

The trial Court failed to properly appreciate the contentions of the petitioner/2nd defendant and failed to take note of the fact that the delay had occasioned not because of wilful and wanton reasons, but because of the circumstances stated by the petitioner/2nd defendant. The Court below had miserably failed to appreciate the contention of the petitioner/2nd defendant that he was laid up with jaundice from 04.02.2013 to 13.02.2014 and that therefore, he could not either meet his counsel or prosecute his defence in the case. The trial Court ought to have seen that valuable rights in respect of valuable property are involved in the suit and that the 1st defendant, who is none other than the brother of the 2nd defendant had played fraud on him, in the circumstances explained in the affidavit filed in support of the petition of the 2nd defendant. The Court below ought to have seen that when sufficient cause is shown for condonation of delay, the petitioner/2nd defendant is entitled to the relief claimed. The Court below had erroneously dismissed the petition. The Court below ought to have seen that when valid explanation is offered for the delay, the length of delay is immaterial. When the counsel had kept the petitioner/2nd defendant under wrong impression that no matters are pending before the Court below, while, in fact, such matters are pending before the Courts, the Court below ought to have condoned the delay, as the law is well settled that a party cannot be penalized when the delay is attributable to the counsel. The Court below ought to have seen that the Court has wide discretion in matters in regard to condonation of delay and that the Courts have to exercise discretion on facts of each case and that in construing the expression ‘Sufficient cause’, the principle of advancing substantial justice is of prime importance. In any view of the matter, the Court below ought to have condoned the delay by imposing costs. The order impugned is unsustainable.

8. On the other hand, 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 very averments in the affidavit are by themselves sufficient to reject the request for condonation of delay. The trial Court has passed a reasoned order having adverted to the facts correctly and also 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 grounds of revision, the 2nd defendant had blamed his advocate without offering any explanation much less valid explanation for the long delay of 194 days. At the time of considering the application for condonation of delay, this Court is not obligated to examine the merits of the *ex parte* decree and if the defendant is aggrieved of the same, he ought to have filed an appeal against the *ex parte* decree. But he did not do so. Further, the contentions in the grounds of revision are false and invented and are introduced for the first time in the revision without any basis in the pleadings urged in the affidavit. The application filed belatedly and in a casual manner does not contain any acceptable grounds as contemplated under Section 5 of the Limitation Act.

9. Before proceeding further, it is necessary to refer to the decisions relied upon by both the sides.

9.1 The learned counsel for the petitioner/2nd defendant had placed reliance on a decision in **Radha Krishna Rai v. Allahabad Bank**[1]**,** wherein the Supreme Court having found that the circumstances are unusual and that the petitioner has been a victim of misrepresentation of facts by his own advocate and was kept under the impression that the appeal is pending before the High Court whereas no appeal was in fact filed by the advocate, and that therefore, it cannot be said that the appellant has not been vigilant in prosecuting the appeal, had condoned the delay by accepting that the cause shown by the petitioner as sufficient to justify the codonation of delay. In the decision in **Dilawer Firdous v. P.S.Rao**[2]**,** this Court having referred to the decision of the Supreme Court in **Vedabai v. Shantaram Baburao Patil** [AIR 2001 SC 2582] had reiterated the legal position that in construing the expression 'sufficient cause', the principle of advancing substantial justice is of prime importance.

10. The learned counsel for the plaintiff called in aid the following decisions. I n **Basawaraj and another v. Special Land Acquisition Officer**[3]**,** while stating that 'sufficient cause' is the cause for which the defendant could not be blamed for his absence, had reiterated the settled proposition of law as follows:

> **"It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law" stands attracted in such a situation. It has consistently been held that, "inconvenience is not " a decisive factor to be considered while interpreting a statute".**

In the decision in **Jangana Rajendra Kumar v. Basava Srinivas**[4]**,** this Court having followed the decision in **Government of Andhra Pradesh v. Murali Madhava Rao**[5] had held as follows:

> **"Even though explanation for day-to-day delay is not being insisted by the Courts, the litigant has to nevertheless furnish the satisfactory explanation for filing the application beyond the prescribed period of limitation. This responsibility on the part of the litigant is much more in cases of abnormal delays, for by such delays right came to be vested in his adversary and such a right cannot be easily taken away by making unduly liberal approach by the Court."**

The decision in **Avuthu Vijayalakshmi v. Managing Director, Pujitha Chit Fund**[6] is relied upon in support of the proposition that a litigant seeking condonation of delay is not entitled to indulgence of the Court when he approaches the Court with unclean hands.

11. The settled legal position, which is relevant to the subject, may be stated as follows: "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. Condonation of delay is a matter of discretion of the Court. The words 'sufficient cause' under Section 5 of the Limitation Act should receive liberal construction so as to achieve substantial justice. However while condoning the delay; the Court should not forget the opposite party altogether. A liberal approach is to be adopted in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act. The concept of such a liberal approach cannot be equated with doing injustice to the other party. 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. Whims or fancies, prejudice or predilections could not form the basis for exercising the discretionary power. When the delay is directly a result of negligence, default or inaction of a party, such delay cannot be condoned on mere asking of that party. When an applicant makes an incorrect statement in an application seeking condonation of delay, the Court ought to refuse to condone such delay or inordinate 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 hearing and disposal of the case. Length of delay is no matter and the acceptability of the explanation is the only criterion. If there is no acceptable explanation, sometimes a delay of shorter length may also be un-condonable whereas in certain other times, the delay of a very long range can be condoned provided sufficient cause is shown."

12. Reverting to the facts of the case, it is to be noted that the plaintiff brought the suit for specific performance of an agreement of sale executed by the mother of the defendants 1 to 3 in respect of a house property. The petitioner/2nd defendant having engaged a counsel had entered appearance. Even according to him, he is having serious disputes with his brother, the 1st defendant; and according to him, the 1st defendant is behind the litigation. However, he did not file his written statement and had remained *ex parte*. Eventually, the suit of the plaintiff was decreed *ex parte* on 10.07.2013. Subsequently, the plaintiff filed E.P no.2 of 2014 to direct the defendants 1 to 3/JDrs to execute and register a regular registered sale deed as per the terms of the decree for specific performance. According to the petitioner/2nd defendant, his brother, the 1st defendant, is also responsible for two other litigations, namely, O.S.no.303 of 2011, which was said to have been filed by the brother of the father-in-law of the 1st defendant and I.P.no.14 of 2012, which is creditor's IP filed by one K.Ravi Kumar. The petitioner/2nd defendant contends that he received notice in EP 136 of 2013 and then came to know about the *ex parte* decree/orders in all the three litigations and also the fraud played by his brother. His main contention is that after the litigations were initiated, he had placed the details of litigations before the family elders and had explained his difficulties to them and that on that they had held a mediation and that before the elders, the 1st defendant had agreed that he had created the litigations to knock away the properties and that at that mediation, the family elders had asked the 1st defendant to 'not press' all the litigations as he is having a job and is financially affluent and that on such advice, the 1st defendant had agreed to withdraw the litigations; and that later, the petitioner/2nd defendant had suffered jaundice during the period from February 2013 to February 2014 and that he was under the impression that his brother had got 'not pressed' the litigations including this suit through his henchmen; but, on receiving the summons in E.P.no.136 of 2013, he had come to know that his brother had played fraud on him and that the plaintiff herein had 'not pressed' the suit and had obtained the *ex parte* decree.

13. A plain reading of the defence of the petitioner/2nd defendant would show that the petitioner/2nd defendant pleaded two sets of contentions. The first set of contentions are to the effect that at a mediation before the family elders, the 1st defendant having agreed that he is responsible for the present litigation/suit had also agreed to withdraw the suit through the plaintiff and that the petitioner/2nd defendant was under the impression that his brother had accordingly got withdrawn the suit. This contention on the face of it is untenable and unbelievable. Even according to the petitioner/2nd defendant, his brother had earlier agreed to secure compassionate appointment on the death of the father, while in service, and had agreed not to come in the way of the 2nd defendant taking the house property of his mother after her death, but did not stick to the terms of the said settlement and had played fraud on the petitioner/2nd defendant. In view of the said contention of the petitioner/2nd defendant, he had believed his brother, the 1st defendant, when he had promised before the elders for withdrawing the litigation through his henchmen, is a contention which cannot be believed as no ordinary prudent man who was once deceived would believe such representation of the same person and keep quiet without obtaining a valid document or without reporting the settlement to Courts in the pending litigations before the Courts. If really, there is a mediation, the petitioner/2nd defendant ought to have pursued the matter and ought to have seen that the suit is withdrawn. He did not do so. He now blames his advocate, during the course of hearing, stating that his advocate did not inform him that the suit is being prosecuted and that he was set *ex parte* for non-filing of his written statement. This contention is not supported by any foundation in the pleadings and therefore, needs no countenance. Further, the petitioner/2nd defendant's affidavit is conspicuously silent on material aspects and is vague as vagueness could be. He did not state in his affidavit as to when he had received notice in E.P.no.136 of 2013 and as to when he came to know about the *ex parte* decree in this instant suit and as to when he had contacted his counsel on coming to know of the *ex parte* decree. Coming to the second set of contentions, his case is that he had suffered jaundice from February 2013 to February 2014. It appears that he had produced a medical certificate before the trial Court. However, the trial Court, which had the advantage of going through the original medical certificate, had held that it is a created medical certificate for the purpose of seeking condonation of delay. Further, the Court below having examined the record had observed in its orders that the petitioner/2nd defendant had appeared in person in E.P.No.136 of 2013 on the file of the Court of the learned Principal Senior Civil Judge, Chittoor during the above said period and sought time for filing counter and that he was later set *ex parte* on 23.06.2014 for not filing a counter and that therefore, the contention that he was laid up with jaundice and was unable to move out of the house is a contention, which cannot be believed. Thus, the trial Court had also found that the petitioner/2nd defendant made a false representation before it while seeking condonation of delay. Further, it is trite to 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 and by simply stating that the petitioner/2nd defendant had suffered from jaundice for about one year. Having had knowledge of the pendency of the suit, the petitioner/2nd defendant had failed deliberately to attend before the trial Court on the date of hearing 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 as 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 had continued and prevented him from taking necessary steps till the date the application is filed. When there is no explanation for the 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 the facts and in law. On a careful analysis of the pleadings of the petitioner/2nd defendant and on a consideration of 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 and that there is no acceptable explanation for the long delay. Further, as the petitioner/2nd defendant had made an incorrect statement in his pleadings and created a medical certificate, he is not entitled to the relief claimed. Having regard to the aforesaid reasons and the fact that the suit for specific performance, which is of the year 2012, was decreed *ex parte* on 10.07.2013, 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 of the 2nd defendant, cannot be condoned on mere asking and in the absence of any valid explanation whatsoever.

14. Accordingly, the Civil Revision Petition is dismissed. No costs.

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

M. SEETHARAMA MURTI, J

05th July, 2016
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[1] (2000) 9 Supreme Court Cases 734

[2] 2002(3) ALT 621

[3] 2014(1) ALD 33 (SC)

[4] 2013 (1) ALT 35

[5] 2013(1) ALT 35

[6] 2005(1) ALD 653