

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5883 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/1st defendant is directed against the orders dated 07.09.2015 of the learned Principal Junior Civil Judge, Gudivada passed in IA.no.464 of 2014 in OS.no.203 of 2010 filed under Section 5 of the Indian Limitation Act requesting to condone the delay of 1175 days in filing the application to set aside the *ex parte* decree passed in the aforementioned suit.

2. I have heard the submissions of the learned counsel for the revision petitioner/1st defendant ('the 1st defendant', for brevity) and the learned counsel for the 1st respondent/plaintiff ('the plaintiff', for brevity). Respondents 2 to 4 are stated to be not necessary parties. I have perused the material record.

3. To begin with, the case of the 1st defendant in support of the request for condonation of delay, in brief, is this:

The plaintiff brought the suit against the revision petitioner/1st defendant and three others for a perpetual injunction in respect of an extent of Ac.2.05 cents of land more fully described in the schedule annexed to the plaint. The defendants entered appearance in the suit. The suit was posted to 09.12.2010 for filing the written statement and also counters in the Interlocutory Application. The 1st defendant could not appear before the trial Court on that day as he went to complete his B.L. examination. He was under the impression that the defendants 2 and 3 are contesting the suit. He could not meet his counsel for preparation of his written statement. Therefore, the trial Court was pleased to set him *ex parte* in the suit. Subsequently, the suit was decreed *ex parte*. After completion of the B.L. degree course, the 1st defendant had met his counsel. He came to know that

the defendants were set *ex parte* on 09.12.2010. The absence on that day before the trial Court is neither willful nor *mala fide*. The 1st defendant has good grounds to succeed in the suit.

4. The plaintiff had filed detailed counter resisting the application *inter alia* contending as follows:

The 1st defendant is required to show sufficient cause for condonation of delay, which is a long delay. There are four defendants in the suit. The 1st defendant alone is now seeking condonation of delay that had occasioned in seeking to set aside the *ex parte* decree against all the defendants, even though some of the defendants are not before this court. He did not state that he is authorised to file the affidavit on behalf of the other defendants also. He is not a GPA holder of the other defendants. As per the averment in the affidavit, the defendants including the 1st defendant were set *ex parte* and the *ex parte* decree was passed on 09.12.2010. The total number of days of delay is 1297, but the 1st defendant is seeking condonation of the delay of only 1175 days. The entire period of delay is not explained and no request is being made for condonation of the entire delay. No sufficient cause is shown for condonation of delay. Even assuming for a moment that the 1st defendant is pursuing Law degree, the said fact does not preclude him from meeting his counsel on Sundays and holidays. If really he was interested in contesting the suit, he ought to have contacted his counsel either on a Sunday or a holiday of the college. Previously, the 1st defendant filed a case in Crime no.103 of 2010 under the provisions of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 506 of the IPC in Gudivada Taluq Police Station. After investigation, the said crime was closed as the contents of the complaint are false. The 1st defendant filed a protest petition before the learned Additional Judicial Magistrate of First Class, Gudivada. That protest petition was dismissed on merits. Bearing grudge, the 1st defendant is filing false cases in order to harass the plaintiff.

5. On merits, the trial Court had dismissed the petition of the 1st defendant

and had refused to condone the long delay. Therefore, the aggrieved 1st defendant is before this Court.

6. The learned counsel for the 1st defendant while reiterating the pleaded case of the 1st defendant would contend as follows:

The order impugned is illegal, arbitrary and contrary to facts and law. The Court below ought to have seen that in the pleadings of the 1st defendant sufficient reasons are mentioned in support of the request for condonation of delay. The counsel for the 1st defendant did not properly inform him about the requirement of filing written statement on the date of hearing on which he was set *ex parte*. The Court below ought to have seen that the 1st defendant is pursuing law course at the time the suit was pending before the trial Court. Having regard to the submissions of the 1st defendant and considering the fact that the suit is filed by suppression of material facts in regard to the grant of patta by the revenue authorities and the cancellation of the patta by the revenue authorities, 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. The Court below ought to have seen that the plaintiff did not make a mention in his suit about the pending proceedings before the revenue authorities and that he had misled the Court by suppressing the material facts. The Court below ought to have seen that the Will relied upon by the plaintiff is invalid and that the plaintiff was working as a Government teacher and was possessing Ac.22.00 cents of land. The Court below ought to have seen that the suit land is a Government land under the control and custody of the Government and that, therefore, the Government is a necessary party to the suit. The Court below had committed a grave mistake in dismissing the petition for condonation of delay.

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. The delay is not 1175 days but the actual number of days of delay is 1297 days. The number of days of delay is incorrectly stated and the entire delay is not explained. In the affidavit filed in support of the petition only two grounds are mentioned. The first ground is that the 1st defendant was pursuing BL course at the relevant time and that he had gone to complete his BL course and that therefore, he could not instruct his counsel to prepare a written statement and consequently he was set *ex parte* for not filing of written statement. The second ground is that he was under the impression that the other defendants are contesting the suit. Except the above two grounds no other grounds are urged in support of the request for condonation of the long delay of more than 3 years. No cause, much less sufficient cause, is shown and no details are urged in the affidavit filed in support of the petition. The petition is filed in a casual manner. Even assuming for a moment that he was pursuing law course, nothing prevented him from meeting his counsel on Sundays and holidays. He simply says that after completion of his BL course he had conveniently met his advocate and then he had come to know about the *ex parte* decree. 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.

8. I have bestowed my attention to the facts of the case. The suit for perpetual injunction filed by the plaintiff was decreed *ex parte*. The 1st defendant is admittedly served with suit summons and he had entered appearance by engaging an advocate. He is aware of the fact that the suit was posted to 09.12.2010 for filing his written statement. He did not either attend before the trial Court or file his written statement through his counsel; therefore, he was set *ex parte*; and, an *ex parte* decree was passed as none of the defendants contested the suit. 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 judgment passed in the suit. If the 1st 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?’ Even assuming that the number of days of delay mentioned by the 1st defendant is correct, still the said delay of 1175 days is a long delay, it being a delay of more than three years. The reason that the 1st defendant is pursuing his B.L. degree course and that he had gone to complete his B.L. degree course and that, therefore, he could not attend the trial court on 09.12.2010 is not a valid and sufficient ground for condonation of the long delay as rightly held by the Court below. The further ground that he was under the impression that the other defendants are contesting the suit is also not a valid ground for condonation of the unexplained long delay. As rightly urged on behalf of the plaintiff, the petition is filed in a casual manner. Even assuming for a moment that the 1st defendant was pursuing law course, nothing prevented him from meeting his counsel on Sundays and holidays. He simply says that only after completion of his B.L. course he had met his advocate and that on such meeting of the counsel he had come to know about the *ex parte* decree. Therefore, the very averments in the affidavit are by themselves sufficient to reject the request for condonation of delay. No details as to when he had written the B.L. final examination and when he had completed his course and met his advocate and when he had come to know about the *ex parte* decree are pleaded in the affidavit. 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 31.07.2014 before the trial Court though the *ex parte* decree was passed admittedly on 09.12.2010. Thus, from the pleadings 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 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. 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**^[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.'

10. Reverting to the facts of the case, 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. 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*. Thus, the affidavit filed in support of the petition lacks in material details, which are vital for consideration. In the facts and circumstances of the case, the delay cannot be condoned when the 1st 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. 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. 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. In the affidavit filed in support of the petition, necessary ingredients are noticeably absent. No reasons much less valid reasons with necessary details were assigned and no cause much less valid and sufficient cause was shown by the 1st defendant for condonation of the delay. When there is no explanation for delay, the 1st 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 1st defendant and the facts and circumstances it is evident that there is no valid explanation for the delay and sufficient cause was not shown for condonation of delay. Having regard to the facts of the case and the further facts that the suit for perpetual injunction which is of the year 2010 was decreed on 09.12.2010, this Court is of the considered view that the delay is due to deliberate inaction and that the delay is directly a result of negligence or default or inaction of the 1st defendant and that such a long delay cannot be condoned on mere asking and in the absence of any explanation.

11. Viewed thus, this court finds that the 1st defendant had not established valid and sufficient grounds to condone the long delay and that, therefore, the Court below is justified in dismissing the application for condonation of delay.

12. 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

1st June, 2016
Vjl

[\[1\]](#) AIR 2011 SUPREME COURT 1150