

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.2075 of 2013

ORDER

This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908, by the unsuccessful plaintiff is directed against the orders, dated 11.03.2013, of the learned Senior Civil Judge, Repalle of Guntur District, passed in IA.no.68 of 2009 in OS.no.111 of 2004 filed under Section 5 of the Indian Limitation Act requesting to condone the delay of 900 days in seeking restoration of the suit, which was dismissed for default on 02.03.2006.

2. I have heard the submissions of the learned counsel for the revision petitioner/ plaintiff ('plaintiff', for brevity). Despite service of notice, none appeared for the respondents/ defendants. I have perused the material record.

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

The suit is filed for recovery of amount on the foot of a promissory note executed by one Chilaka Shanta Rao in favour of the plaintiff. The suit was posted to 02.03.2006. On that day, the plaintiff could not attend before the trial Court. His counsel also could not represent the matter. Hence, the suit was dismissed for default. In seeking restoration of the suit, the delay had occasioned. Hence, the petition is filed seeking condonation of delay of 900 days. There is no wilful negligence on the part of the plaintiff. If the delay is not condoned, the plaintiff suffers serious and irreparable loss.

4. The respondents/ defendants remained *ex parte* and did not contest the application filed by the plaintiff for condonation of delay.

5. The trial Court dismissed the petition on the grounds that no cause at all was shown and that no explanation was offered to explain the long and

abnormal delay of 900 days. Aggrieved of the said orders, the plaintiff had preferred this revision petition.

6. In the grounds urged before this Court, the plaintiff contended as follows:

The plaintiff is a resident of Narasaraopet. The suit was instituted in a Court at Repalle. He is a chronic patient. He is under regular treatment. He is being regularly hospitalized because of his ailments. The fact that he is not in a position to attend the Court on the day to which the suit was posted could not be informed to the counsel. Therefore, the counsel could not represent the matter. The trial Court without assigning valid reasons dismissed the petition. The trial Court failed to see that there is no negligence on the part of the plaintiff.

7. The learned counsel for the plaintiff reiterated the grounds urged and submitted that an opportunity may be given to the plaintiff to have the suit decided on merits by allowing the revision.

8. I have bestowed my attention to the facts and given earnest consideration to the submissions of the learned counsel for the petitioner.

9. The suit is filed on the foot of a promissory note for recovery of a sum of Rs.2,94,500/- with interest and costs. The suit was dismissed for default on 02.03.2006. Perusal of the affidavit filed in support of the petition would reflect that the petition for condonation of delay in seeking restoration of the suit is filed in a casual manner and that no cause, much less sufficient cause, was shown and no explanation, much less valid explanation, was offered 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. Even though in the grounds of revision, it is urged that the plaintiff is suffering from ill-health, what is the ailment with which the plaintiff is suffering is not disclosed and no medical record is produced in support of the said contentions,

which are advanced for the first time before this Court. In the affidavit filed in support of the petition, there is no whisper about the ill-health of the plaintiff and no acceptable explanation was offered and no valid cause was shown for condonation of delay as contemplated under Section 5 of the Limitation Act. Thus, the application filed belatedly and in a casual manner does not contain any acceptable grounds as contemplated under Section 5 of the Limitation Act.

10. 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.' Having regard to the facts and the legal position obtaining it is not possible to accept the vague explanation given by the plaintiff for the long delay.

11. As noted before, 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 dismissal of the suit for default and till the date the applications for condonation of delay and for restoration of the suit were filed. In the facts and circumstances of the case, the delay cannot be condoned when the plaintiff who is seeking

¹ AIR 2011 SUPREME COURT 1150

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. When there is no explanation for delay, the plaintiff 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.

12. On a careful analysis of the pleadings of the plaintiff and the facts and circumstances it is manifest 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 fact that the suit for recovery of money which is of the year 2004 was dismissed for default on 02.03.2006, this Court is of the considered view that the long delay of 900 days, which is due to deliberate inaction and which is directly a result of negligence or default of the plaintiff, cannot be condoned on mere asking and in the absence of any explanation whatsoever. The trial Court has passed a reasoned order having adverted to the facts correctly and the legal position in proper perspective. No grounds much less valid grounds are urged and made out for allowing the revision and setting aside the order impugned. Having regard to the reasons, this Court finds that the Court below is justified in dismissing the application for condonation of delay and that there is no illegality much less patent illegality or jurisdictional error calling for interference.

13. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, in this revision shall stand closed.

17th September, 2016
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M. SEETHARAMA MURTI, J

