

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.200 of 2016

ORDER:

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This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for brevity) by the petitioners/appellants/defendants 1 to 4 is directed against the orders dated 05.02.2015 of the learned Principal District Judge, Khammam passed in I.A.no.182 of 2013 in an unregistered first appeal suit-ASSR no.179 of 2013 filed under Section 5 of the Limitation Act for condonation of the delay of (3776) days in filing the aforementioned proposed first appeal suit against the decree and judgment dated 16.08.2002 of the learned II Additional Junior Civil Judge, Khammam passed in O.S.no.71 of 2002.

2. I have heard the submissions of the learned Government Pleader for Arbitration representing the petitioners/appellants/defendants 1 to 4 ('the defendants 1 to 4', for brevity) and the learned counsel for the 1st respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The facts, as borne out by the record and as per the submissions made at the hearing, in brief, as follows:

The sole plaintiff brought the suit against the defendants 1 to 4, the officials of the Government, and two other unofficial defendants for recovery of property viz., dry land admeasuring 1848 square yards, i.e., Ac.0.15 ½ guntas (756 feet X 22 feet) in Sy.no.362/C and 363/D/A situated at Konijerla village and Mandal of Khammam District, morefully described in the schedule annexed to the plaint. In the said suit, damages at the rate of Rs.2,000/- per annum were also claimed. The defendants 5 and 6 had remained *ex parte*. The defendants 1 to 4 had filed a written statement resisting the suit. After full-fledged trial, the trial Court had decreed the suit of the plaintiff as prayed for. Aggrieved of the decree and judgment of the trial Court, the defendants 1

to 4 had preferred the [unnumbered] first appeal suit. The said first appeal suit was not registered as the said first appeal suit was preferred after the expiry of the time allowed under law for preferring the first appeal. Therefore, the defendants 1 to 4 had filed I.A.no.182 of 2013 for condoning the delay of (3776) days in filing the said proposed first appeal suit. The said application for condonation of delay was dismissed by the 1st appellate court, by orders dated 11.02.2014. Therefore, the defendants 1 to 4 had preferred C.R.P.no.2470 of 2014 before this Court. When the said revision came up for hearing before this Court on 14.10.2014, this Court while giving an opportunity had directed the District Collector, Khammam/3rd revision petitioner to look into the matter and file a detailed additional affidavit by 24.10.2014 stating as to what action the State intends to take against the erring officers. Pursuant to the said directions of this Court in the revision, the District Collector, Khammam had filed his affidavit on 09.11.2014. Subsequently, this Court had disposed of the aforementioned revision on 18.11.2014 and remitted the matter to the learned District Judge, Khammam to consider the additional affidavit filed by the District Collector and pass appropriate orders afresh in I.A.no.182 of 2013. Further, this Court had also granted liberty to the plaintiff to file a counter. On such remand of the matter to the District Court, the learned District Judge having heard the submissions of the learned counsel for the parties had once again dismissed the application of the Government (defendants 1 to 4) by the impugned order. Therefore, the defendants 1 to 4 are before this Court.

4. The learned Government Pleader would submit as follows: "Initially the application filed for condonation of delay in preferring the first appeal suit was supported by an affidavit of the MDO concerned. In the said affidavit, sufficient explanation is given in support of the request for condonation of delay. The plaintiff/Decree Holder is making hectic efforts to execute the decree that was granted by the trial Court and recover possession of the property. The said property is a road being used by the public at large. The Decree Holder had committed before the villagers that the decree would not be executed as the property in question is a road and is being used daily by

thousands of people. In the circumstances, the then MDO having thought that the matter has subsided did not approach the Government Pleader for taking necessary steps for preferring an appeal. Subsequently, the file could not be traced. Therefore, the matter could not be brought to the notice of the higher officials. Even after filing of the execution petition and till the execution petition has reached the stage of evidence on the side of the judgment debtor, the file could not be traced. Therefore, steps could not be taken for preferring the first appeal within the time allowed under law. Later, the MDO concerned had taken an opinion of the Government Pleader and had got preferred the appeal. Non-filing of the appeal in time is not intentional; and the delay in filing the first appeal suit had occasioned due to inadvertence of the then MDO. In the peculiar facts and circumstances of the case, it became imminent to prefer the first appeal after lapse of nearly (3776) days of delay. During the pendency of the earlier revision, the District Collector, as per the direction of this Court, had filed an affidavit before this Court narrating all the facts that lead to the delay in filing the first appeal suit by the Government. The District Collector had also stated in his affidavit that the property in question is a cart track. The District Collector had further stated in his affidavit that he had examined the entire matter and that on such examination, it came to light that the erring officers in the present case are the then Mandal Parishad Development Officer, M. Vidyathala (presently working as Mandal Parishad Development Officer, Mandal Praja Parishad, Bonakal of Khammam District) and Sunkar Rama Mohan Rao (now retired)-the then Deputy Executive Engineer, Panchayat Raj, Khammam and that the disciplinary authority of the Mandal Parishad Development Officer is the Commissioner, PR & RE, Telangana, Hyderabad as per the CC&A Rules, 1991 and that the disciplinary authority of the Deputy Executive Engineer is the Engineer-in-Chief, Panchayat Raj, Telangana, Hyderabad and that already memos were issued to the said two erring officers calling upon them to offer their explanations and that their explanations were also received and that articles of charges were also framed against the said officers and served upon them and that the Additional Joint Collector, Khammam has been appointed as the Enquiry Officer, vide Proceedings Rc.No.A1/3659/2014 to

conduct regular enquiry under Rule 22 of the AP CC&A Rules, 1991 against the said erring officers. In the circumstances of the case, if the road that was laid upon the cart path is destroyed by executing the decree, the public at large who are using the road for their passage would suffer. Irreparable loss will be caused to the public at large; and the same cannot be compensated in any manner. Therefore, the delay may be condoned in the interests of justice by allowing the revision and setting aside the impugned order.”

5. On the other hand, the learned counsel for the plaintiff while supporting the orders of the Court below, had vehemently opposed for the condonation of the long delay and had *inter alia* contended as follows: “A perusal of the judgment of the trial Court would show that the plaintiff had established his right to recover possession of the suit schedule property, which is his private property. The officers concerned of the Government are not only not diligent but also were grossly negligent in the matter. The long delay was caused due to their deliberate inaction in the matter. The said delay that had occasioned due to the willful and wanton conduct of the officers of the Government cannot be condoned. The judgment of the Court below was delivered on 16.08.2002. But, the application for condonation of delay with annexed proposed first appeal suit was filed on 19.01.2013. The said application for condonation of delay was supported by an affidavit of the MDO concerned. In the said affidavit, no explanation, much less valid explanation was offered for the long delay. The grounds urged to the effect that the plaintiff had committed before the villagers not to execute the decree and that the file was not traced for a long time are false and invented grounds. The plea that the file was not traced till after the filing of the execution petition and till the execution petition had reached the stage of JDR’s evidence, would only show the further gross negligence on the part of the officers concerned of the Government. The Government did not acquire the land of the plaintiff for laying the road. No prejudice would be caused if the order of the Court below is sustained as the Government can always, and if it so desires, acquire the property in accordance with procedure established by law, by paying adequate compensation. Absolutely no grounds, much less valid grounds

were urged and made out for condoning the delay. No cause, much less sufficient cause is shown for showing indulgence to the defendants 1 to 4. The well-reasoned order of the Court below is sustainable under facts and in law and does not call for any interference.”

6. I have gone through the pleadings in the interlocutory application and the affidavit of the learned District Collector. The District Collector admittedly had no personal knowledge in regard to the delay that had occasioned in preferring the first appeal. His affidavit shows that departmental action was initiated against the two officers, who were *prima facie* found to have been responsible for the delay in filing the appeal. The questions whether or not they are really responsible for the delay and whether or not they would be liable for any punishment will have to be decided at the conclusion of the departmental enquiries initiated against them and the said matter is not relevant for consideration in the present revision petition. Therefore, the contents of the affidavit of the present District Collector, filed as per the directions of this Court in the earlier revision in regard to the circumstances that lead to the granting of the decree by the trial Court, the filing of the EP by the Decree Holders/plaintiffs, and the other chronology of events in regard to the dismissal of the petition for condonation of delay etcetera are therefore, not germane for consideration in this revision petition, which is filed assailing the orders of the learned District Judge whereby the petition for condonation of delay in preferring the first appeal suit was dismissed. Therefore, the affidavit of the learned District Collector who has no personal knowledge of the matters is not helpful to the defendants/revision petitioners. Hence, what remains for consideration is the affidavit of the then MDO, which was filed in support of the petition for condonation of delay. A perusal of the said affidavit of the then MDO would reveal that two main grounds were urged in support of the request for condonation of delay. The first ground is that after passing of the decree by the trial Court in the year 2002, at the instance of the villagers, the plaintiff had orally committed to the villagers at large that he would not execute the decree as thousands of people are daily using the road even by the date of the decree and that on such commitment of the plaintiff, the then

MDO had thought that the matter has subsided and therefore, did not approach the office of the Assistant Government Pleader for taking necessary steps for preferring the appeal. The second ground is to the effect that subsequently, the file was not traced and therefore, the then MDO could not bring the facts to the notice of the higher officials and that the file could not be traced till the execution petition has reached the stage of adduction of evidence on the side of the judgment debtors. It is also stated that after the file is traced, an opinion was obtained and the appeal was preferred along with an application for condonation of delay and that in the facts and circumstances, the delay had occasioned due to inadvertent acts of the then MDO and that the said delay is not due to intentional reasons. The affidavit of the MDO discloses that the length of delay is (3680) days. However, the material record including the order of this Court in the earlier revision would disclose that the delay is (3776) days. In the earlier orders, this Court observed that the delay is enormous and abnormal and the affidavit that was filed in support of the petition for condonation of delay is a perfunctory and casual affidavit. However, since the matter is remitted to the learned District Judge by orders dated 18.11.2014 passed in CRP no.2470 of 2014, in the well-considered view of this Court, the learned District Judge rightly considered the merits of the application for condonation of delay uninfluenced by the aforementioned observations of this Court. Be that as it may, since the learned District Judge had dismissed the application for condonation of delay, now it is to be examined as to whether any sufficient cause was shown by the Government for condonation of delay.

7. Though no decisions are cited in view of the fact that the legal position is well settled, it is apt to note the following settled propositions on the settled legal aspects regarding condonation of 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. 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, prejudices or predilections could not form the basis for exercising the discretionary power. 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. 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 uncondonable whereas in certain other times, the delay of a very long range can be condoned provided sufficient cause is shown.” 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.’

8. Reverting to the facts of the case, it is to be first noted that the then MDO did not obtain the opinion of the learned Assistant Government Pleader in regard to the requirement of preferring a first appeal or not. The explanation for not obtaining an opinion promptly in that regard is that the plaintiff at the instance of the villagers had committed that he would not

execute the decree. The details of such commitment like the names of the elders amongst such villagers who were present at the time of the alleged commitment and the date or an approximate period of time at which such a commitment was made etcetera are not pleaded in the affidavit filed in support of the petition for condonation of the delay. It is hard to believe that the plaintiff, who had obtained a decree on merits, after a serious and long drawn contest, had made such a commitment. Further, even if any such commitment was said to have been made, still, the Government officer concerned should have approached the Assistant Government Pleader and ought to have obtained his opinion and ought to have got preferred a first appeal and ought to have got the settlement recorded in the said appeal. Such a course, which is expected of him, is not followed. The next cause urged for condonation of delay is that the record was misplaced and could not be traced till the execution petition reached an advanced stage of the evidence on the side of the judgment debtors/ Government. The said averment lays bare that even after the execution petition was filed, no sincere efforts were made by the officer and his staff concerned for tracing the file. Therefore, the reasons assigned *ex facie* appear to be not sufficient and valid reasons for condonation of the long delay of more than (3500) days. In the facts and circumstances of the case, there is no material to hold that the cause for the delay is not wilful or unintentional. On the other hand, as rightly held by the Court below, the delay that had occasioned is only a direct result of the negligence/default or inaction of the officers of the Government/defendants and that the said delay is deliberate. In the well-considered view of this Court, if such long delay, which is unexplained by showing sufficient cause, is condoned at this distance of time, it would result in injustice to the plaintiff/decreed holder in whose favour, a right has accrued. In the facts and circumstances of the case, this Court is of the well-considered view that the explanation offered for the long delay does not afford sufficient ground for exercising the discretion in favour of the Government/the defendants 1 to 4. Hence, this Court finds that there is no justification for the delay and that such long delay, which is a result of deliberate inaction and negligence cannot be condoned on the mere asking of the defendants 1 to

4/the appellants in the unregistered appeal.

Having regard to the reasons, this Court finds that the order impugned does not warrant interference.

9. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

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

M.SEETHARAMA MURTI, J

18th March, 2016
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[\[1\]](#) AIR 2011 SUPREME COURT 1150