

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No. 1774 of 2011

ORDER

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908, (hereinafter, 'the Code', for brevity), by the unsuccessful petitioner/ appellant/ defendant is directed against the orders dated 14.02.2011 of the learned XI Additional District Judge, Gudivada of Krishna District, passed in IA.No.447 of 2010 in un-numbered AS of 2008 filed under Section 5 of the Limitation Act, 1963, requesting to condone delay of 461 days in preferring the said unregistered appeal.

2. I have heard the submissions of Sri P.N. Murthy, learned counsel appearing for the revision petitioner/ defendant ('the defendant', for brevity) and Sri O. Manohar Reddy, learned counsel for the respondents/ plaintiffs ('the plaintiffs', for brevity). I have perused the material record.

3. The facts which are necessary to be stated as a prelude to this order, in brief, are as follows:

3.1 The plaintiffs brought the suit against the defendant for a perpetual injunction before the Court of the learned Junior Civil Judge, Gudivada. The defendant resisted the said suit. On merits, the learned Junior Civil Judge decreed the suit of the plaintiffs on 04.12.2006.

3.2 Aggrieved thereby, the unsuccessful defendant preferred an appeal before the Court of the learned XI Additional District Judge, Gudivada of Krishna District. As a delay of 461 days had occasioned in preferring the said appeal, IA.No.447 of 2010 was filed for condonation of the said delay, *inter alia*, contending as follows: - 'Since the date of the institution of the suit, the defendant is trying to amicably settle the matter with the plaintiffs. Though the defendant has a strong defence, the learned Junior Civil Judge decreed the

suit in favour of the plaintiffs. Having no capacity to go around the Court and bear the hardship, the defendant continued his efforts for amicable settlement. However, the plaintiffs, without coming forward to settle the matter, took advantage of the fact that long time lapsed since the date of the grant of the decree by the trial Court and started harassing the defendant. Being unable to bear such harassment, the defendant preferred the first appeal before the Additional District Court along with an application to condone the delay, which had occasioned in the said circumstances. This defendant is having a strong case in the proposed appeal suit. If the delay is not condoned, he would suffer serious loss.'

3.3 *Per contra*, the case of the plaintiffs as stated in the counter, in brief, is this: 'The rights that had accrued to the plaintiffs under the decree shall not be disturbed in view of the long lapse of time since the date of the decree. No valid and sufficient cause was shown for condonation of the abnormal delay of 461 days. No cogent, convincing and justifying reasons are assigned for condonation of the delay. It is only stated that the delay had occasioned as the defendant was trying to amicably settle the matter. The said contention is false and is concocted for the purpose of filing this petition for condonation of delay. It is false to state that the defendant made efforts to settle the matter and approached the plaintiffs a number of times and that these plaintiffs were unwilling to settle the matter and took advantage of lapse of time and caused troubles and harassment to the defendant. The averments in the affidavit of the defendant are false. The explanation offered is vague and created.'

3.4 During the course of enquiry before the Court below, no oral and documentary evidence was adduced on either side. On merits, and by the order impugned in this revision, the Court below dismissed the application of the defendant. Hence, the defendant preferred this revision.

4. The learned counsel for the defendant while reiterating the pleaded case of the defendant, which is stated supra, contended as follows: 'The delay had occasioned in preferring the appeal suit only on account of the fact that the defendant was making efforts from the beginning to amicably settle the matter with the plaintiffs and as he was not having physical capacity to go around the Court and bear the hardship in prosecuting the appeal. Taking advantage of the fact that long time elapsed since the passing of the decree against the defendant, the plaintiffs started giving troubles and meeting out harassment to the defendant. Though the defendant had waited with a *bona fide* intention to settle the matter amicably, the plaintiffs are now denying the efforts made by the defendant to settle the matter amicably. The delay, therefore, is neither intentional nor was due to *mala fide* reasons. In the facts and circumstances of the case, the Court below ought to have condoned the delay and given the defendant an opportunity to have the appeal suit decided on merits.'

5. Per contra, the learned counsel for the plaintiffs while reiterating the defence of the plaintiffs and while supporting the orders of the Court below would contend that except stating that the defendant tried to amicably settle the matter and that he did not prefer the appeal as was not having physical capacity and strength to go around the Courts, no further allegations explaining the long delay of 461 days were made in the affidavit and that no such efforts for compromising the suit were ever made by the defendant and that in deed the defendant had strongly resisted the suit and that the trial Court decreed the suit and that having suffered a decree, the defendant had wantonly kept quiet as he has no tenable defence or valid grounds for preferring an appeal and that the delay is deliberate and intentional and that the appeal was preferred with abnormal delay even without offering any explanation much less valid explanation for the said delay and that the Court below is justified in dismissing the defendant's application.

6. It is well settled principle that expression 'sufficient cause' under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice and what constitutes sufficient cause always depends on the facts and circumstances of a particular case. Hence, the application need not be rejected merely on the ground of inordinate delay, but the test shall be whether sufficient cause is made out for the delay. Before proceeding further, 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. Veena¹]. 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.'

7. I have given earnest consideration to the facts and the submissions and also the legal position obtaining. The specific case of the defendant is that he was trying for amicable settlement from the inception that is from the time of the institution of the suit. However, he simultaneously prosecuted his defence in the suit and strongly resisted the suit of the plaintiffs. The suit was decreed on merits after full-fledged trial. Even assuming for a moment that the defendant was interested in settling the matter even after the suit was decreed, nothing prevented him from preferring an appeal and making efforts simultaneously for settlement as he did during the pendency of the suit for settlement while prosecuting the defence. However, he did not do so. The defendant ought to have realised at least after the suit was decreed or after some reasonable time thereafter that his alleged efforts for compromise are not going to fructify. But, the defendant deliberately and wantonly did not prefer an appeal and is blaming the plaintiffs that they did not come forward to settle the matter despite his efforts, though there is no proof that he made any sincere and genuine efforts for settlement at any time. There is no iota of proof or semblance of material brought on record to show that there were ever

¹ AIR 2011 SUPREME COURT 1150

any talks for compromise between the parties. Further, the averment that he did not prefer an appeal owing to his physical incapacity and inability to bear the hardship of going around the Court also lays bare that he consciously failed to take steps to prefer an appeal within the time allowed under law. As per settled 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. When an applicant makes a bald statement in an application seeking condonation of delay and fails to substantiate the same, the Court ought to refuse to condone such delay or inordinate delay. In the decision in *Esha Bhattacharjee V/s Managing Director of Raghunathpur Nafar Academy and others*², the Supreme Court having referred to the decisions and discussed the principles related to the issue pertaining to the condonation of delay culled out the broad principles and gave further following guidelines:

- (a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.
- (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.
- (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.
- (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.

In the cited decision, it was held that neither leisure nor pleasure has any room while one moves an application seeking condonation of delay of almost seven years on the ground of lack of knowledge or failure of justice. It was also held that Court must keep itself alive to the concept of exercise of judicial discretion that is governed by rules of reason and justice. The ratio in the cited case squarely applies to the facts of the instant case. On the above

² 2014 (1) ALD 21 (SC)

analysis this Court finds that no cause much less sufficient cause was shown for condonation of the long delay of nearly one year one hundred days and that the Court below is justified, in the facts and circumstances of the case, in dismissing the application filed by the defendant for condonation of delay and that there is no merit in the revision.

8. In the result, the revision petition is dismissed.

Pending miscellaneous petitions, if any, in this revision shall stand dismissed. There shall be no order as to costs.

M.Seetharama Murti, J

20th October, 2016
Vjl

