

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.2610 of 2016

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 (hereinafter, 'the Code', for brevity), by the unsuccessful petitioner/2nd defendant is directed against the order, dated 08.10.2015, of the learned VII Additional District Judge, Mahabubnagar, (Judge, Fast Track Court) (holding Full Additional Charge of the post of the IX Additional District Judge, Wanaparthi), passed in I.A.No.565 of 2014 in A.S.No.2 of 2012 on the file of the IX Additional District Court.

2. I have heard the submissions of Sri G.Vidyasagar, learned senior counsel appearing for the revision petitioner/2nd defendant ('2nd defendant', for brevity) and Sri Damodar Reddy, learned counsel for the respondents/plaintiffs 1 and 2 ('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:

The plaintiffs (2nd plaintiff, since died), originally brought the suit against the defendants 1 and 2 for declaration of title and perpetual injunction. After the said suit was decreed, the 2nd defendant filed a first appeal in A.S.No.2 of 2012. The said Appeal Suit was dismissed for default on 24.04.2012. Therefore, an application was filed to set aside the order of dismissal for default and restore the Appeal Suit to file. Since a delay of 371 days had occasioned in filing the said application,

I.A.No.565 of 2014 was filed under Section 5 of the Limitation Act, 1963, requesting to condone the said delay. That application was resisted by the plaintiffs. On merits, the trial Court dismissed the said application. Therefore, the 2nd defendant/APSRTC filed this Revision.

4. To begin with, it is necessary to refer to the pleadings of the parties.

4.1 The case of the revision petitioner/2nd defendant, as stated in the affidavit of its Standing Counsel, in brief, is this:

The Appeal Suit was posted to 24.04.2012 for filing counters of plaintiffs in I.A.No.42 of 2012, filed by the appellant under Order 41 Rule 27 of the Code. On that date, the learned Standing Counsel of 2nd defendant Corporation could not go over to Wanaparthy as a number of motor accident claims cases were posted for trial before the Motor Accident Claims Tribunal at Mahabubnagar. Therefore, he requested Sri B. Chandra Sekhar, learned advocate, to make a representation on his behalf in the above case. The matter was, however, passed over. Thereafter, the Appeal Suit was dismissed without calling the matter once again. In view of the pre-occupation of the deponent in the heavy work before Motor Accident Claims Tribunal, Mahabubnagar all these days, he could not file the application seeking to set aside the order of dismissal for default, dated 24.04.2012, passed in the above Appeal Suit. In fact, I.A.No.42 of 2012 filed in the Appeal Suit is coming for the counters of the respondents therein. The non-filing of the petition for restoration of the Appeal Suit within time is on account of the aforesaid

reasons and the delay is not due to intentional or deliberate reasons. If the delay is not condoned and the order of dismissal for default passed in the Appeal Suit is not set aside, the 2nd defendant Corporation would suffer serious loss.

4.2 The case of the plaintiffs, as stated in the counter affidavit of the 1st plaintiff, in brief, is this:

The suit is filed for declaration of title, injunction and recovery of possession of the property situated at Nagarkurnool town more fully described in the schedule and shown in the sketch annexed to the plaint. On merits, the trial Court decreed the suit in favour of the plaintiffs. The 2nd defendant filed A.S.No.36 of 2009 on the file of the Court of District Judge, Mahabubnagar. The appellant was never ready and the matter was adjourned on a number of occasions. Afterwards, after the establishment of IX Additional District Judge's Court at Wanaparthy, the said appeal suit was transferred to the said Court and was duly renumbered. Even though the said Appeal Suit is an identified matter, the appellant did not get ready. The appellant did not appear before the Court despite the Court granting several adjournments for hearing of the appeal. Eventually, the Court below was pleased to dismiss the appeal for default. After a long delay of 371 days, the present application is filed. The Standing Counsel of the appellant filed the supporting affidavit. It is impermissible for the counsel to file the affidavit on behalf of his client. It is stated that the Standing Counsel is pre-occupied with his heavy work, namely, Motor Accident claims cases before the Motor Accident Claims Tribunal, Mahabubnagar, and that therefore he

could not file the application within time for restoration of the appeal after setting aside the order of dismissal for default. The 2nd defendant Corporation is having two Standing Counsel on its panel. The State Road Transport Corporation is having sufficient number of personnel and staff to attend to the Court proceedings. In the affidavit of the Standing Counsel, no explanation is given for non attendance of any officer of the Corporation before the Court below on the date of adjournment. Day to day delay is not explained. No sufficient reasons are stated for condonation of delay, which is abnormal. The delay is purely on account of negligence on the part of the officers of the Corporation and also the Standing Counsel. The delay is not satisfactorily explained. After the suit was decreed, the plaintiffs had already applied for permission to the Gram Panchayat, Nagarkurnool, for construction of shops over the suit schedule property and they had also collected material and completed construction of the shops and the shops are being put to use. If the petition is allowed at this stage, the plaintiffs would suffer serious and irreparable loss. The 2nd defendant Corporation is not diligent. The petition is liable for dismissal.

5. The learned senior counsel appearing for the revision petitioner/2nd defendant and the learned counsel for the respondents/plaintiffs made submissions in line with the pleadings of the respective parties.

6. A perusal of the order of the Court below would show that the application of the 2nd defendant was dismissed, *inter alia*, observing that

the practice of advocate filing his affidavit in support of the Interlocutory Application is deprecated and that the counsel is only permitted to represent his client and that he cannot step into the shoes of his client and that the affidavit in support of the Interlocutory Application is to be filed by the party concerned only and not by the counsel. In support of the said reasoning, the Court below placed reliance on the decision of this Court in *Pasupuleti Subba Rao Vs. Nandavarapu Anjaneyulu*¹. Further, the Court below distinguished the decision in *G.Satyanarayana Vs. M.Shankar*², wherein, this Court held as follows:-

Every interlocutory application shall be accompanied by an affidavit, which affidavit should contain the statement of facts made on information or belief of the deponent and the source or ground of such information or belief. Nowhere, it has been mentioned that the affidavit filed in support of the petition shall be given by the party himself. Anybody, who is conversant with the statement of facts, which are necessary to be furnished for maintaining an interlocutory application, can therefore, give the affidavit.

In the said decision, the learned single Judge of this Court held that the above view finds support from the decision in *Hussaini Begum Vs. B.Ramachandraiah*³.

However, this aspect of the matter need not detain this Court for long in view of the Division Bench Decision of this Court in *G.Krishna Murthy Vs. Hemalatha Chit Funds Pvt. Ltd and others*⁴. In the said decision, this Court, having considered the provisions of Rules 48, 54 and 59 of the A.P. Civil Rules of Practice and having referred to various precedents, summed up the legal position as follows:-

¹ 2003 (3) ALT 816

² 2001 (1) ALD 317

³ 1976 (1) AnWR 325

⁴ AIR 2006 AP 398

From the above, it is clear that all the interlocutory applications need not necessarily be signed by the party himself or herself and an affidavit can be signed either by the party himself or by an Advocate or anybody, including the clerk of an Advocate, who is conversant with the statement of facts, which are necessary to be furnished for maintaining an interlocutory application.

Therefore, the reasoning of the Court below that the application is liable for dismissal as the supporting affidavit is given by the Standing Counsel and not by the party is contrary to the ratio in the Division Bench decision of this Court and therefore cannot be sustained.

7. Dealing next with the aspect as to whether sufficient explanation is offered and sufficient cause is shown for the condonation of delay, it is trite to mention that the explanation that is offered in the affidavit of the Standing Counsel is already extracted *supra* while adverting to the pleadings of the parties.

7.1 A plain consideration of the explanation offered would show that the Standing Counsel of the 2nd defendant Corporation on account of his heavy work and pre-occupation in a number of Motor Accident Claims cases pending on the file of the Motor Accidents Claims Tribunal, Mahabubnagar, could not evince interest in the Appeal Suit, which was originally on the file of the District Court, Mahabubnagar, and which was later transferred to the Court at Wanaparthi, and also could not take appropriate steps within the time allowed under law for seeking to set aside the order of dismissal for default and that therefore, the delay has occasioned. His affidavit also shows that an interlocutory application in I.A.No.42 of 2012 under Order XLI Rule 27 of the Code is filed in the

appeal suit and that the said application was coming for filing counters of plaintiffs/respondents therein as on the date the appeal suit was dismissed for default.

7.2 *Per contra*, the contention of the plaintiffs is that the delay is abnormal and it had occasioned only on account of the negligence of the officers of the 2nd defendant Corporation and their Standing Counsel and that despite the fact that the Corporation is having sufficient number of personnel and staff members to attend to the Court proceedings, none of them appeared before the Court below on various dates of adjournments and that the delay is not properly explained and sufficient cause is not shown for condonation of long delay.

7.3. The learned counsel for the plaintiffs placed reliance on the following decisions in

- 1) **Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai**⁵
- 2) **Dr.Damarla Savithri Vs. Kande Sreenivasulu**⁶.

In *Maniben Devraj Shah*'s case (5th supra), the Supreme Court, while dealing with the aspect of sufficient cause for condonation of delay, held thus:-

What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide

⁵ AIR 2012 Supreme Court 1629

⁶ 2014 (5) ALD 108

nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies / instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.

In *Dr.Damarla Savithri* (6th supra), this Court, on the aspect of discretion to be exercised in the matters of condonation of delay, held thus:-

It is trite that the Courts, as far as possible, have to adjudicate disputes on merits as the intendment of law is to decide the cases on merits rather than dismissing them on defaults. However, the law of limitation has been enacted with a view to put quietus to the litigation and to bring certainty over the litigation between the parties. While the person who offers reasonable or plausible explanation for the delay is entitled to indulgence of the Courts for condonation of delay, at the same time, Courts need to be conscious of the plight of the adversary party while considering such applications. A long drawn litigation would more often be a curse to the vexed litigant. As a coin has two sides, a dispute involves two warring parties. Excessive liberal approach in favour of one party will be the nemesis of the other party. Therefore, superior Courts have been time and again holding that a balanced approach is needed while considering the applications for condonation of delay.”

In the above decision, this Court referred to three main tests to be applied while considering an application for condonation of delay, which are as follows:-

- (i) whether a party has offered explanation which can be termed as reasonable or plausible (ii) whether condonation of long delay will result in revival of a stale litigation causing undue hardship to the adversary party; and (iii) whether third party interests have been involved thereby unsettling their interests.

7.4 The learned counsel for the plaintiffs fairly stated that the Court below ought not to have dismissed the application solely on the ground that the supporting affidavit was furnished by the Counsel and not by the party concerned. However, placing reliance on the above two decisions, the learned counsel for the plaintiffs forcefully contended that the delay is not explained properly and sufficient cause is not shown for condonation of delay and that the Court below, having come to conclusion that the application is liable for dismissal for not filing the affidavit of the party, did not properly appreciate the contentions in the counter and that the Court below only made a passing reference to the aspect of explanation for delay and that therefore, in view of the Division Bench decision of this Court in the case of **G.Krishna Murthy** (4th supra), this revision may be allowed and the application for condonation of delay may be remitted to the Court below for fresh consideration on merits.

7.5 *Per contra*, the learned senior counsel appearing for the 2nd defendant Corporation would submit that the Court below adverted to in its order the aspect of explanation of delay also abut, the Court below had not considered the said aspect of the matter properly and correctly and that therefore, there is no need to remit the matter and that this Court may dispose of this revision on merits. Learned senior counsel would further submit that for the fault of the counsel, a party cannot be penalized and that valuable rights in regard to immovable properties are involved; and that as public interest is also involved, the delay may be condoned after accepting the explanation offered in the affidavit of

Standing Counsel for the 2nd defendant Corporation in the interest of justice and give an opportunity to the 2nd defendant Corporation to have the Appeal Suit disposed of on merits to meet the ends of justice.

8. 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. Veena**⁷]. 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.’”

9. I have given earnest consideration to the facts and the submissions and also the legal position obtaining. 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. In the well

⁷ AIR 2011 SUPREME COURT 1150

considered view of this Court, as rightly contended by the learned senior counsel for the 2nd defendant Corporation, for the fault of the Standing Counsel of the Corporation in not filing the application in time on account of his pre-occupation in his other heavy work, the Corporation cannot be penalized. Further, when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. In the case on hand, neither the explanation for the delay can be termed as casual nor can the delay be termed as deliberate delay. In the facts and circumstances of the case, there are no circumstances to hold that the delay was deliberate or that it was on account of culpable negligence or *mala fides*. In the facts and circumstances, this Court is of the well considered view that the delay has been properly explained and that the cause which was shown for the delay can be accepted as a sufficient cause for condonation of delay. Hence, this Court sees no tenable objections in the counter. In view of the detailed discussion coupled with reasons, this Court is satisfied that the delay can be condoned, however, after imposing terms. If the delay stands condoned the 2nd defendant appellant is likely to get an opportunity to have the appeal decided on merits and such a course subserves the ends of justice. However, the relief can be granted only after imposition of adequate terms to compensate the loss and hardship that may be caused to the respondents/ plaintiffs on account of the consequential delay in hearing of the case. The point is accordingly answered.

10. In the result, the Civil Revision Petition is allowed and the order dated 08.10.2015, in I.A.No.565 of 2014 in A.S.No.2 of 2012 on the file of the IX Additional District Court is set side and accordingly the said application is allowed and the delay of 371 days in filing the petition for restoration of the Appeal Suit, which was dismissed for default on 24.04.2012, is condoned subject to the condition of the revision petitioner/2nd defendant Corporation depositing Rs.3,500/- (Rupees Three Thousands and Five Hundreds Only) to the credit of the Appeal Suit before the Court below within three (03) weeks from the date of receipt of a copy of this order. Failing such compliance, the application for condonation of delay shall stand dismissed and the order of the Court below shall stand restored. On such deposit, the plaintiffs/respondents are at liberty to withdraw the same without furnishing any security by filing an appropriate application before the Court below.

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

M.Seetharama Murthi, J

27th August, 2016
Bvv