

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4842 of 2016

ORDER:

1) Aggrieved by the order dated 10.08.2016 passed in I.A.No.161 of 2015 in I.A.No.922 of 2011 in O.S.No.454 of 2008 on the file of the Additional Senior Civil Judge, Tirupati, wherein and whereunder a petition filed under Section 5 of Limitation Act to condone the delay of 1122 days to file an application to set aside the dismissal order in I.A.No.922 of 2011 was allowed, the present Civil Revision Petition is filed by the plaintiff under Article 227 of the Constitution of India.

2) The facts in issue are as under:

3) The petitioner/plaintiff herein filed O.S.No.454 of 2008 against the respondent for specific performance of contract. As no written statement was filed, the trial Court made the respondent/defendant exparte and exparte decree came to be passed. On coming to know about the same, the respondent/defendant filed a petition under Order 9 Rule 13 of C.P.C. to set aside the exparte decree along with the petition under Section 5 Limitation Act to condone the delay of 145 days. The trial Court while allowing the Section 5 Limitation petition directed the respondent/defendant to pay Rs.150/- to the plaintiff on or before 26.09.2011 which was complied by the respondent. The trial Court also allowed the set aside exparte decree petition on 11.12.2011 with a condition to deposit the suit

costs within 15 days from the date of order, failing which the petition shall stand dismissed. The respondent/ defendant failed to comply the said order as he fell seriously ill in the second week of December, 2011 due to neurology problem and took treatment for his ailment and he was totally bed ridden for a long time ie. till March, 2013. Subsequently, he filed a petition to condone the delay of 1122 days.

4) A counter came to be filed by the plaintiff contending that with a view to drag the proceedings, the defendant filed the petition. After considering the medical record produced by the defendant the trial Court allowed the petition on payment of costs of Rs.5,610/- to be deposited on or before 19.08.2016. Aggrieved by the same, the plaintiff preferred the present Civil Revision Petition.

5) The affidavit filed in support of the application to condone the delay would show that nothing was informed by the counsel for the defendant about the suit proceedings. Immediately after receiving notices in E.P.No.34 of 2013, the defendant took back the case bundle from his previous counsel and engaged another counsel to proceed with the case. It is further stated that as he was suffering with neurological problem in the second week of December, 2011, he was bed ridden for a long time. He also placed on record before the trial Court the Xerox copies of the certificates issued by the doctor to prove his bona fides. It is

urged that delay in filing the application is neither wilful nor wanton but only due to his illness.

6) It is true that there is abnormal delay of 1122 days in filing the petition but at the same time, the circumstances under which the said application came to be filed also needs to be considered.

7) The issue that arises for consideration is whether the delay of 1122 days in filing a petition to set aside the dismissal order in I.A.No.922 of 2011 can be condoned.

8) Learned counsel for the petitioner placed reliance on the judgment of the Apex Court in *G.P.Srivastava v. R.K.Raizada and others*¹, wherein the Apex Court held as under:

“The "sufficient cause" for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time. If "sufficient cause" is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits.”

9) In *State of Bihar and others v. Kameshwar Prasad Singh and another*² the Apex Court held as under:

¹ (2000) 3 SCC 54

“11. Power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing of matter on merits. This court in *Collector, Land Acquisition, Anantnag v. Mst. Katiji*³ held that the expression ‘sufficient cause’ employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of Courts. It was further observed that a liberal approach is adopted on principle as it is realised that:

- 1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.
- 2) Refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
- 3) ‘Every day’s delay must be explained’ does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? The doctrine must be applied in a rational common sense pragmatic manner.
- 4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

² (2000) 9 SCC 94

³ (1987) ILLJ, 500 SC

5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of *mala fides*. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6) It must be grasped that judicial is inspected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

10) From the judgments of the Apex Court referred to above, it is clear that delay can be condoned if the circumstances indicate that meritorious matter would be thrown out and the cause of justice would be defeated, if the delay is not condoned. The Apex Court has categorically held that even if the delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

11) It is clear from the material on record that the respondent/defendant could not comply with the conditional order only due to his ill health as he suffered some neurological problem and was bed ridden for a long time. The same was accepted by the trial Court basing on the Medical Certificates produced before it. The said explanation cannot be brushed aside having regard to the circumstances under which it was accepted. In view of the above, this Court is of the view that the impugned order warrants no interference.

12) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

13) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

25.11.2016
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