

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.5108 of 2016

ORDER:

This revision, under Article 227 of the Constitution of India, by the unsuccessful petitioners-defendants is directed against the orders, dated 06.09.2016, of the learned Junior Civil Judge, Narayanpet, passed in IA.no.267 of 2015 in OS.no.81 of 2005 filed under Section 5 of the Limitation Act, 1963, ('the Act', for short), requesting to condone the delay of (1405) days in filing the annexed application filed under Order IX Rule 13 of the Code of Civil Procedure Code, 1908, requesting to set aside the *ex parte* decree, dated 02.06.2011, passed in the aforementioned suit.

2. I have heard the submissions of *Sri Rajagopallavan Tayi*, learned counsel for the revision petitioners-defendants and *Sri M. Vijay Kumar Goud*, learned counsel for the respondent-plaintiff. I have perused the material record.

3. The parties shall hereinafter be referred to as they are arraigned in the Suit.

4. The case of the defendants, as stated in the affidavit filed by the 3rd defendant, in brief, is as follows:

In the suit filed by the plaintiff, the defendants entered appearance having engaged Sri Seetharama Rao, Advocate, Narayanpet, to represent them and defend the suit on their behalf. The 3rd defendant has temporarily migrated to Mumbai for eking out livelihood. As such he could not secure information about the death of his said counsel and the passing of the *ex parte* decree in the suit. He recently came to Narayanpet in connection with a criminal case in which he has to give evidence as a witness. Then he came to know that his said counsel died and that due to non representation by the counsel, the suit of the plaintiff was decreed *ex parte* on 02.06.2011. For the

afore-stated reason only the 3rd defendant could not prosecute his defence and in the said circumstances the delay of 1405 days had occasioned from 02.06.2011 to 07.04.2015. The delay was not intentional but had occasioned only due to the afore-stated reason. The Court is having ample power to condone delay.

5. The case of the plaintiff, in brief, is this: 'The counsel engaged by the defendants failed to cross-examine the plaintiff. The suit was decreed *ex parte* on 02.06.2011. The defendants are very much aware of the said fact. Since their defence in the written statement is false, they did not choose to contest the suit. The counsel died in May, 2010. The suit was decreed on 02.06.2011. The allegation that the 3rd defendant is not aware of the death of the counsel till he came over to Narayanpet in connection with a criminal case in which he has to give evidence is totally false. As per law, the defendants are required to explain the delay by showing proper and sufficient cause. The delay is apparently due to gross negligence. The delay of 4 years was not explained and the petitioners failed to furnish any sufficient reason. Hence, the petition may be dismissed.'

6. At the hearing before the trial Court, no oral and documentary evidence was adduced. On merits and by the order impugned in this revision, the trial Court dismissed the petition. Aggrieved thereby the defendants preferred this revision.

7. The learned counsel for the defendants while reiterating the pleaded case of the defendants, which is stated supra, in detail, *inter alia*, contended as follows:

The defendants explained the delay properly. The delay had occasioned not due to their negligence but due to *bona fide* reason of the death of their counsel and lack of knowledge of the death of the counsel. The suit is filed for injunction. If the *ex parte* decree is set aside and the suit is restored for being

disposed of on merits, no prejudice would be caused to the plaintiff. The trial Court erroneously dismissed the petition by observing that the delay is not explained ignoring the fact that the counsel for the defendants had expired and the defendants had no knowledge of the said fact as the 3rd defendant temporarily migrated to Mumbai for eking out livelihood and the defendants were in darkness about the death of the counsel and the *ex parte* decree till the 3rd defendant came down to Narayanpet in connection with a criminal case in which he has to give evidence. The trial Court ought to have seen that the petition was filed immediately on coming to know about the passing of the *ex parte* decree.

8. Per contra, the learned counsel for the plaintiff while reiterating the case of the plaintiff pleaded in the counter would submit as follows:

Absolutely no grounds much less valid grounds are urged and no sufficient cause was shown for condonation of the long delay of more than four years. Without furnishing any details as to when the 3rd defendant came down to Narayanpet and when he came to know about the death of the counsel and the *ex parte* decree, the petition is filed in a casual manner. There is no justification for the long delay. When the delay is not explained, the petitioners are not entitled to any relief. The trial Court is justified in dismissing the petition for condonation of delay in the facts and circumstances of the case. The delay is due to gross negligence and deliberate inaction on the part of the defendants. There are four defendants in the suit. It is not explained in the affidavit as to why the other defendants could not contact the counsel and contest the suit, when they are very much available in the village.

9. I have bestowed my attention to the facts and submissions.

10. 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.

11. 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.’

¹ AIR 2011 SUPREME COURT 1150

12. Reverting to the facts of the case, it is to be noted that it is blithely stated in the affidavit of the 3rd defendant filed in support of the petition for condonation of delay that he having engaged an advocate to enter appearance and defend the suit on behalf of the defendants temporarily migrated to Mumbai for eking out livelihood and that he is unaware of the death of the counsel and the passing of the *ex parte* decree till he came down to Narayanpet in connection with a criminal case for giving evidence, but he did not plead as to when he came down to Narayanpet and when he came to know about the death of the counsel and the passing of the *ex parte* decree and other details which are required to be pleaded. When the delay is a long delay of 1405 days, the defendants are required to explain the delay by giving necessary details. However, the affidavit of the 3rd defendant filed in support of the petition is conspicuously silent with regard to the said details and, therefore, it is obvious that no explanation much less valid explanation was offered for the long delay and hence, there is no justification for seeking condonation of delay. On a careful consideration it appears that the averments made in the affidavit filed in support of the petition do not constitute a sufficient cause for condonation of the delay. Further, the long unexplained delay cannot be condoned as the averments, which are unsubstantiated do not constitute a sufficient cause for condonation of long delay and as it appears from the facts borne out by the record that there is no justification for the long delay. 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. Hence, this court cannot condone the delay in a case where the Court concludes that there is no justification for the delay. Thus, in the facts and circumstances of the case, the delay cannot be condoned as the petitioners-defendants who are seeking condonation of delay had failed to demonstrate that the cause that had prevented them from pursuing the remedy had sprouted before the expiry of

limitation and continued and prevented them from taking necessary steps till the date the application is filed.

13. 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. In *Brijesh Kumar and others V/s State of Haryana and others*³ the Supreme Court held thus:

“The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.”

² 2014 (1) ALD 21 (SC)

³ 2014 (4) ALD 1 (SC)

The ratios in the above referred decisions squarely apply to the facts of the instant case. On the above analysis this Court finds that no cause much less sufficient cause was shown for condonation of the long delay and that the delay cannot be condoned as there is no justification for the delay and that in the facts and circumstances of the case, the Court below is justified in dismissing the application filed by the petitioners for condonation of delay and that there is no merit in the revision.

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

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

10th February, 2017
VJl



M. SEETHARAMA MURTI, J