

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.2479 of 2013

ORDER:

This civil revision petition under Section 115 of the Code of Civil Procedure, 1908, ('the Code', for short) by the unsuccessful petitioner is directed against the order dated 26.02.2013 of the learned Judge, Additional Family court, Visakhapatnam, passed in IA.no.519 of 2012 in OP.No.285 of 2011 filed under Section 5 of the Indian Limitation Act, 1963, requesting to condone the delay of 181 days in filing the annexed petition filed under Order IX Rule 9 of the Code seeking restoration of OP.no.285 of 2011, which was dismissed for default on 16.04.2012.

2. I have heard the submissions of Ms. Anula, learned counsel representing Sri Mangena Sree Rama Rao, learned counsel for the revision petitioner, and of Sri Jayanthi S.C. Sekhar, learned counsel for the respondent. I have perused the material record.

3. The case of the petitioner, in brief, is this: - 'The FOCP filed by the petitioner was posted to 16.04.2012 for the evidence of the petitioner. However, the petitioner could not appear before the Court below and give evidence, as he suffered high fever and was bed ridden on that day. Subsequently, when he enquired about the matter, he was informed that the OP was dismissed for default on 16.04.2012 itself. He was further informed that he has to file an application for restoration of the OP within 30 days from that day. He has no knowledge about the proceedings since 16.04.2012 till he contacted his counsel yesterday i.e., on 12.10.2012, which is a day before the filing of the application for condonation of delay. As such he could not file the application seeking restoration of the OP within time. Hence, the delay had occasioned. The non filing of the application for restoration within time is

neither wilful nor for wanton reasons. If the delay is not condoned, he suffers serious and irreparable injury.'

4. The respondent-wife filed a counter denying the allegations. Her specific case is this: - 'The docket order dated 16.04.2012 of the Court below reflects that it was represented before the Court below by the father of the petitioner that the petitioner left for USA for the purpose of his employment and therefore he could not attend before the Court on 16.04.2012. However, in the affidavit of the petitioner, it is alleged that he suffered high fever. Therefore, the cause pleaded is false and a misrepresentation was made in the affidavit filed in support of the petition. The day to day delay is not explained; and no valid explanation for the long delay was offered. Hence, the petition is liable for dismissal in limine.'

5. At the hearing before the trial Court, no oral and documentary evidence was adduced. The trial Court, noticed that the docket order dated 16.04.2012 would clearly show that the petitioner was absent on 16.04.2012 and that on that day his father was present and represented that the petitioner left for USA for securing a job; the trial Court also noted that the OP was dismissed for default on 16.04.2012 as the matter which is coming for evidence of the petitioner is pending since a long time and that therefore keeping the matter pending would not serve any useful purpose. Finally, the trial Court dismissed the petition for condonation of delay. Aggrieved thereof, the petitioner filed this revision petition.

6. The learned counsel for the petitioner while reiterating the case of the petitioner, which is stated supra, would submit that the respondent filed two OPs viz., FCOP.nos.3 of 2012 and 4 of 2012 for grant of maintenance and restitution of conjugal rights and that the present OP was filed by the petitioner-husband for grant of divorce and that when the said OP is coming up for evidence, a proper representation could not be made before the trial Court

due to communication gap and that it was only represented that the petitioner went to USA for job though in fact the petitioner having left for USA had returned and thereafter fallen sick. She therefore submitted that there is no misrepresentation or false representation in the affidavit of the petitioner and that valuable matrimonial rights of the parties are involved and hence the delay may be condoned and the application for restoration may also be considered and the petitioner may be given an opportunity to have his cause disposed of on merits instead of throwing it out at the threshold for technical reasons.

7. Per contra, the learned counsel for the respondent-wife while reiterating the defence of the respondent-wife and while pointing out the observations in the order of the Court below submitted that the petitioner made false representations and false averments in his affidavit filed in support of the petition and that the delay as required under law is not explained. He pointed out that the petition was dismissed on 16.04.2012 and that even according to the averments in the affidavit filed in support of the petition, the petitioner did not contact his counsel till 12.10.2012 and that the delay during the said period and the reason for not contacting the counsel till that date are not explained and that therefore the unexplained delay cannot be condoned. He thus supported the orders of the Court below.

8. 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.'

9. Reverting to the facts of the case it is to be noted that the OP filed by the petitioner-husband stood posted to 16.04.2012 for commencement of trial. However, the petitioner did not appear before the Court below and give evidence and therefore his OP was dismissed for default. He filed a petition for restoration of the OP after a delay of 181 days had occasioned. Hence, he filed the present petition for condonation of delay. His case is that as he suffered high fever and was bed ridden on that day, he could not attend before the trial Court and that he subsequently enquired about the matter and that he was informed that the OP was dismissed for default on 16.04.2012 and that he has no knowledge of the proceedings since 16.04.2012 till he contacted his counsel on 12.10.2012, which is a day prior to the filing of the subject application for condonation of delay and as such he could not file the application seeking restoration of the OP within time. As rightly pointed out, in the affidavit of the petitioner filed in support of the petition, the reason assigned for non attendance on 16.04.2012 is illness; whereas the docket order of the trial Court made on that day would reflect that his father attended before the Court and represented that the petitioner went to USA for a job. Therefore, the above said explanation offered in the affidavit of the petitioner

¹ AIR 2011 SUPREME COURT 1150

appears to be not true and it follows that the petitioner made an incorrect statement in his affidavit filed in support of his request for condonation of delay. Since the petitioner made an incorrect statement in his application seeking condonation of delay, the Court ought to refuse to condone the delay. Now an explanation is being offered before this Court that due to communication gap a representation was made on 16.04.2012 before the trial Court that the petitioner left for USA for a job while the true fact is that he went to USA for a job and had returned and suffered illness on the said day and therefore could not attend before the trial Court. This unsubstantiated explanation offered belatedly need not be countenanced. Be that as it may. The OP was dismissed on 16.04.2012, but, the petitioner did not admittedly contact his counsel till 12.10.2012, that is, till one day prior to the filing of the subject application for condonation of delay. For the said delay, no explanation was offered in the affidavit of the petitioner. It is simply averred that after contacting the counsel on 12.10.2012 the petition seeking condonation of delay was filed. No explanation is forthcoming for the said long delay. Thus, in the facts and circumstances of the case, the delay cannot be condoned as the petitioner who is seeking condonation of delay had failed to demonstrate that the cause that had prevented him from pursuing the remedy had sprouted before the expiry of limitation and continued and prevented him from taking necessary steps till the date the application is filed.

10. In the decision in Esha Bhattacharjee V/s Managing Director of Raghunathpur Nafar Academy and others², 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:

² 2014 (1) ALD 21 (SC)

(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. Further, 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.”

³ 2014 (4) ALD 1 (SC)

11. The ratios in the cited cases 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 petitioner for condonation of delay and that there is no merit in the revision.

12. In the result, the Civil Revision Petition is dismissed confirming the order of the trial Court.

Miscellaneous petition pending, if any, in this revision shall also stand dismissed. There shall be no order as to costs.

02.01.2017
vj|



M. SEETHARAMA MURTI, J