

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1831 OF 2011

ORDER:

This civil revision petition is filed under Section 115 C.P.C challenging the order in I.A.No.667 of 2009 in Un-Regd.As No. of 2009 dated 27.01.2011 passed by the Senior Civil Judge, Nirmal.

The petitioner filed an application I.A.No.667 of 2009 under Section 5 of Limitation Act to condone delay of 1652 days in filing the appeal. It is alleged that the petitioner left to Bahrain on private employment on 05.12.2001 and returned to India on 26.08.2009. The petitioner appointed one Venkanna as his General Power of Attorney (GPA) holder to lookafter the suits filed by him and against him in Nirmal Court. The suit O.S.No.23 of 19998 was filed by the petitioner against respondents. At the time of adducing evidence in suit, the petitioner learnt that Venkanna i.e. GPA holder was disturbed on account of harassment of police and there was threat to his life on the allegation that he was a Praja Shakti activist and he went underground. Therefore, the petitioner could not contact his counsel to prosecute the suit and the suit was dismissed. Thus, the cause which the petitioner was prevented to file an appeal is sufficient and reasonable and prayed to allow the application I.A.No.667 of 2009.

Upon hearing arguments of both the counsel, Senior Civil Judge, Nirmal, dismissed the petition holding that the petitioner failed to establish sufficient or reasonable cause which he was prevented in filing the appeal and dismissed I.A.No.667 of 2009.

During hearing, learned counsel for the petitioner Sri A.M. Rao while reiterating the contentions, contended that, as the petitioner was outside the Country, he could not prosecute the proceedings by filing an appeal. Therefore, the said cause that the petitioner was outside the Country is sufficient cause to condone the delay. That apart, the General Power of Attorney Holder did not Prosecute the proceedings properly and he was in underground due to threat from police, as he belongs to Praja Sakthi Party. Hence, the petitioner was prevented from sufficient cause.

Whereas, learned counsel for the respondent opposed the petition while contending that the petitioner was represented by General Power of Attorney Holder by name Venkanna and he prosecuted the proceedings throughout before the Trial Court and filed an appeal against the decree and judgment before the Senior Civil Judge's Court, Nirmal, which ended in dismissal in the year 2006 itself and was returned at pre-registration stage, but did not comply with the objections. Therefore, filing an appeal with delay and subsequently raising a contention that the petitioner was outside the Country is not a sufficient cause and prayed for dismissal of the petition.

Undisputedly, the petitioner went to Bahrain on 05.12.2001 after filing the suit in the year 2000 and he returned on 26.08.2009. On behalf of the petitioner, one Venkanna being an agent of the petitioner holding General Power of Attorney prosecuted the entire suit proceedings and filed an appeal. Admittedly, it was returned at pre-registration stage in the year 2006. Thus, the petitioner was represented by his agent and filed

an appeal against the decree and judgment passed by the Trial Court. No doubt, the petitioner invented a different story that he was not aware of the disposal of the suit. When agent had knowledge about disposal of the suit, the same is sufficient to attribute knowledge to the principal. Therefore, the cause shown by the petitioner is not sufficient as the petitioner was not prevented by any cause beyond his reasonable control, as he was represented by Venkanna i.e his General Power of Attorney Holder. Further, the petitioner is also not entitled to claim benefit under Section 15(5) of Limitation Act, for the reason that the petitioner himself was not prosecuting the proceedings, but he was represented by General Power of Attorney Holder. If, really, the petitioner was prosecuting the proceedings from outside the Country, he is entitled to claim benefit under Section 15(5) of Limitation Act, but not in the present case. Thus, the Appellate Court rightly dismissed the petition holding that the petitioner failed to establish sufficient cause which is beyond his reasonable control to condone the delay of 1652 days and consequently, the petition deserves to be dismissed.

In the result, the civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:09.06.2017

SP