

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4105 of 2016

ORDER:

This Civil Revision petition, under Section 115 of the Code of Civil Procedure, 1908, ('the Code', for brevity) is filed by the plaintiffs assailing the order, dated 07.09.2015, of the learned Special Sessions Judge for trial of cases under SC/ ST (POA) Act-cum-VII Additional Sessions Judge, Mahabubnagar, passed in I.A.No.302 of 2013 in O.S.No.71 of 2009 filed by the plaintiffs under Section 5 of the Limitation Act requesting to condone the delay of (764) days in filing the application under Order IX Rule 9 of the Code for restoration of the suit, which was dismissed for default on 30.06.2011.

2. I have heard the submissions of *Sri Mohd. Mon Ahmed Quadri*, learned counsel for the petitioner and *Sri Srinivas Bazar*, learned counsel for the respondents 3, 4 and 5. I have perused the material record.

3. The case of the plaintiffs in support of their request for condonation of delay, in brief, is as follows:

The suit is filed for partition of the plaint schedule properties. The claim made in the suit is based on a deed of Will. The suit was adjourned to 30.06.2011 for adducing evidence on the side of the plaintiffs. On that day, the plaintiffs were absent and there was no representation for them by their counsel. Therefore, the suit was dismissed on 30.06.2011, for non-prosecution. The then counsel, Sri M.Krishna Rao, informed the plaintiffs that he would contact and inform them as and when their appearance is required before the Court. Therefore, the plaintiffs were expecting a communication from their said counsel. However, no communication was received by them from the said counsel. Therefore, they had no knowledge of the dismissal of the suit for default. As the counsel had stated that he would inform the plaintiffs as and when their presence is required, the plaintiffs have not contacted their said

counsel. There was a communication gap or breakdown of communication between the plaintiffs and their said counsel. The 1st plaintiff was very young by that time and has no worldly knowledge. The 2nd plaintiff is his mother and she is an innocent semi-literate lady. The other plaintiffs are his sisters and they also have no knowledge of the legal procedures. Since the sisters were married, they have entrusted the duty of prosecuting the suit to the 1st plaintiff and the 2nd plaintiff, who is their mother. As per the customs of the family of the plaintiffs, the lady members of the family being parda nasheen ladies do not step out of the house without a male relative accompanying them. The 2nd plaintiff is not having elementary communication skills and therefore, they could not instruct the counsel properly. So, the plaintiffs faced lot of difficulties in prosecuting the suit. Further, in the early months of the year 2011, one real estate agent, Abhishek Pitti, contacted the 2nd plaintiff and advised her to sell away the property to others and that the purchasers will take care of the litigation. Since the plaintiffs were in difficult times and were in a financially dire state and as the marriages of the sisters of the 1st plaintiff had to be performed at that time, the plaintiffs agreed to sell the property. The 2nd plaintiff asked the said agent, Abhishek Pitti, to specifically disclose about the litigation to prospective buyers as the plaintiffs never wanted to face another round of litigation from any such purchasers. The said agent told the plaintiffs 1 and 2 that he will henceforth look after the entire matter including the suit and there is no need to worry and advised the plaintiffs 1 and 2 not to contact directly anybody or disclose anything as such disclosure would complicate the matter. Therefore, the plaintiffs were of the fond hope that the above named agent would disclose the pending litigation to the prospective buyers and that the buyers would buy the property with the knowledge of the suit and the consequences of the suit. Soon after, the said agent told the plaintiffs that the suit property was sold; the plaintiffs received major amount towards sale consideration and signed an agreement of sale and also issued

receipts; and, the plaintiffs were told that the balance of consideration would be paid at a later date or at the time of registration. The agent informed the plaintiffs that he had disclosed the fact of pendency of litigation to the buyers and that the buyers would be prosecuting the suit and that the said aspect has been informed to the counsel. Hence, the plaintiffs did not contact their counsel and did not pursue the suit. Later, the said agent informed the plaintiffs that the buyers are asking the plaintiffs to execute a registered sale deed. Therefore, the plaintiffs took the balance of sale consideration and executed a sale deed dated 30.03.2013 in favour of the buyers and delivered vacant possession of the property to them. On 10.08.2013, the buyers directly contacted the plaintiffs and stated that some third parties are frequenting the suit schedule property and interfering with his possession and asked for clarification. Then, the plaintiffs informed him that it is his look out as he had purchased the property having knowledge of the pending litigation. Then, the plaintiffs were informed that the agent did not disclose to him about the fact of pending litigation. The plaintiffs were surprised. They tried to contact Abhishek Pitti. But, he avoided the plaintiffs. The plaintiffs also came to know that the said agent, Abhishek Pitti, never met the counsel of the plaintiffs at any time and that their suit was dismissed on 30.06.2011 for non-prosecution. Hence, an application was filed on 02.09.2013 for restoration of the suit. Since the delay of (764) days had occasioned in seeking restoration of the suit, the subject application is filed for condonation of delay. The delay had occasioned for the above said genuine reasons and not due to wilful and wanton reasons. The delay had occasioned due to accidental and unintentional reasons. If the suit is not restored by condoning the delay, the purchasers who purchased the suit schedule property may prosecute the plaintiffs and seek refund of purchase money. In such a case, the plaintiffs would suffer serious loss. Hence, the delay may be condoned.

4. The 1st respondent/ 1st defendant died. The respondents 2 to 5 having engaged a counsel to represent them failed to file a counter. The 6th respondent/ 6th defendant remained *ex parte* and therefore, notice to the said respondents/ defendants was dispensed with by the trial Court. On merits and by the order impugned in this revision, the trial Court dismissed the application of the plaintiffs for condonation of delay *inter alia* observing that the suit is of the year 2009 and that though the matter was adjourned several times, the plaintiffs did not show any interest to prosecute the suit and that therefore, the suit was dismissed on 30.06.2011 for default and that the present application for condonation of delay was filed after a long delay and that the theory of communication gap between the plaintiffs and their counsel was invented by engaging a new counsel and that the further theory that they sold the property pending partition suit without the advice of the counsel and without contacting the counsel on record is unbelievable and that the plaintiffs having sold the property to third parties have no subsisting interest in the *lis* and that therefore, the application for condonation of delay is liable for dismissal.

5. Aggrieved thereof, the plaintiffs preferred this revision.

6. The learned counsel for the plaintiffs while reiterating the pleaded case of the plaintiffs, which is extracted *supra*, in detail, would contend as follows:

The suit filed for partition was dismissed for default and for non-prosecution. A detailed explanation was given in the affidavit filed in support of the petition for condonation of delay. None of the respondents contested the said application. Therefore, the submissions made in the affidavit filed in support of the petition remained uncontroverted. Moreover, the mother and sisters are *paradanasheen* ladies and the 1st plaintiff/ deponent of the affidavit was a very young person at the relevant time. For the said reasons and as the agent, Abhishek Pitti, who approached the plaintiffs had mislead and cheated

them by making false representations and as the counsel who was engaged also did not inform the plaintiffs having stated that he would inform the plaintiffs as when their presence is necessary before the Court, the suit ended in dismissal for default. Thus the suit was dismissed for no fault of the plaintiffs, who are innocent people. Since the property was sold during the pendency of the suit to third parties and the agent of the plaintiffs had not informed about the pendency of the suit to the said 3rd party purchasers, the purchasers raised dispute with the plaintiffs. Then only the plaintiffs made enquiries and came to know about the dismissal of the suit. Hence, the plaintiffs filed the petition for condonation of delay along with the petition for restoration of the suit, which was dismissed for default. In the circumstances stated and in the absence of any opposition from the contesting respondents and in the absence of any counter or counter affidavit filed by them, the trial Court ought to have allowed the petition.

7. *Per contra*, the learned counsel appearing for the respondents 3, 4 and 5 while supporting the orders of the Court below had submitted as follows: 'Though no counter has been filed before the trial Court, the trial Court examined the case pleaded by the plaintiffs on its merit and dismissed the petition by giving valid and cogent reasons. Moreover, the plaintiffs are throwing the blame on the former counsel and also an alleged agent-Abhishek Pitti. They filed the petition by conveniently changing the counsel and by making false allegations. In the affidavit filed in support of the petition, no details are furnished. The copy of the alleged sale deed dated 30.03.2013 is not filed. The names of the alleged purchasers are not disclosed in the affidavit. The legal principle is that the purchasers must take due care before purchasing the property. Therefore, the contentions of the plaintiffs that the purchasers purchased the property even without enquiring about the title of the plaintiffs and also without the knowledge of the pending litigation are unbelievable. Having come to know of the litigations also, the purchaser(s) did

not come forward for his/their impleadment as plaintiff(s) to the suit. The contesting respondents 3, 4 and 6 have come to know that even the purchaser (s) has/ have sold the property to third parties.

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

9. 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.

10. 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*¹]. 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.'

11. Reverting to the facts of the case, it is to be noted that the pleadings and the contentions of the plaintiffs reflect that the plaintiffs having filed a suit for partition did not prosecute the suit, but, sold away the property to third parties during the pendency of the suit through a middle man/ agent, by name, Abhishek Pitti. They first complain against their former counsel by stating that their said counsel having informed them that he would inform them as and when their presence is necessary before the Court failed to do so. Now, they also blame a middle man, Abhishek Pitti, stating *inter alia* that he cheated them by making false representations and that the said agent having undertaken to inform the prospective purchasers about the pending litigation did not inform either the purchasers about the pending litigation or the plaintiff's counsel about the sale of property by the plaintiffs and that the acts of cheating and misrepresentations made by the agent lead to dismissal of the suit. They also submit that they did not contact the then counsel as the counsel himself promised to contact them as and when necessary and as the agent also gave false assurances to them that he had informed the counsel about the sale of the property by the plaintiffs to 3rd parties. The plaintiffs also submit that they executed a registered sale deed after receiving full consideration from some third party purchasers. Their claim in the suit is based on a Will deed. In the written statement filed by the defendants 2 to 5 before the trial Court, it is categorically pleaded that the Will deed is fabricated and that the defendants 2 to 5 having purchased the property

¹ AIR 2011 SUPREME COURT 1150

demolished old structures in the property and that the said fact is known to one and all and that the defendants 2 to 5, who are having General Power of Attorney from the 1st defendant executed six registered sale deeds; three of them on 28.10.2009 and three of them on 30.10.2009 and that the defendants 2 to 5 had also lodged a police complaint on 23.10.2009 before the Station House Officer, Jadcherla Police Station and that a case in Crime No.281 of 2009 was registered and is pending and that the suit for partition is not maintainable and is liable for dismissal. Despite taking such a defence in the written statement, the plaintiffs did not prosecute the suit and sold away the property to third parties during the pendency of the suit. Therefore, as rightly held by the trial Court, the contentions of the plaintiffs that they sold the property even without consulting their counsel and that the purchasers purchased the property without the knowledge of the suit for partition which was pending and that the plaintiffs and their agent sold away the property to third parties without informing them about the pending litigation and that the purchasers purchased the property, which is the subject matter of the suit, without verifying the right, title and interest of the plaintiffs over the property cannot be countenanced in a Court of law. Even the third party purchasers, who were said to have purchased the property under a registered sale deed dated 30.03.2013 from the plaintiffs, did not come before the trial Court on their own for their impleadment either during the pendency of the suit or after dismissal of the suit by filing appropriate applications. The plaintiffs did not mention the details of the purchasers and did not produce the copies of the sale deeds executed by them in favour of the purchasers. The plaintiffs having stated that a purchaser directly contacted and questioned them on 10.08.2013, failed to mention as to who was that purchaser and as to when they made enquires about the status of their suit and when they came to know about the dismissal of their suit. 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 plaintiffs/petitioners 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.

12. 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

² 2014 (1) ALD 21 (SC)

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 of 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.”

The ratios in the above referred 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 plaintiffs/ petitioners for condonation of delay and that there is no merit in the revision.

12. 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.

6th January, 2017
RAR

M. SEETHARAMA MURTI, J

³ 2014 (4) ALD 1 (SC)