

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6496 of 2016

ORDER:

1) Aggrieved by the order, dated 09.12.2016, passed in I.A.No.801 of 2015 in O.S.No.56 of 2008 on the file of the Senior Civil Judge, Palamaner, wherein an application filed under Section 5 of Limitation Act to condone the delay of 846 days in filing an application under Order IX Rule 13 of C.P.C. was dismissed, present Civil Revision Petition is filed under Section 115 of C.P.C.

2) The facts in issue are as under:

Respondent Nos.1 to 3 herein, filed O.S.No.56 of 2008, seeking partition of the schedule property into six equal shares by metes and bounds by taking good and bad qualities into consideration and to allot 1/6th share to each of the plaintiff and put them in separate possession of the same. An exparte preliminary decree came to be passed on 23.08.2012. After passing preliminary decree, the plaintiffs filed a petition seeking to pass a final decree. On coming to know about the same, the petitioners herein, who are defendant Nos.1 and 2 in the suit filed I.A.No.801 of 2015 to condone the delay in filing an application under Order IX Rule 13 of C.P.C.

3) The averments in the affidavit filed in support of the petition would show that after receiving Court summons, the petitioners entrusted the papers to defendant No.2, who assured that he will

take care of the suit and prosecute the same on their behalf. It is also stated that the petitioners herein migrated to Tirupathi in the year 2009 and defendant No.2 informed them that on enquiry he came to know that the suit is pending. Recently they received notices in the final decree petition and also came to know that the suit was decreed exparte on 23.08.2012. Immediately, thereafter, they filed an application under Order IX Rule 13 C.P.C. along with an application to condone the delay.

4) Plaintiffs filed counter stating that the present petition came to be filed only to delay the proceedings. It is also stated that there is abnormal delay in filing the petition and the petitioners failed to explain day today delay in filing the petition.

5) After considering the rival submissions made, the trial Court dismissed the said petition. Challenging the same the present revision is filed.

6) Learned counsel for the petitioners mainly submits that the delay in filing the set aside exparte decree petition is neither wilful nor wanton. It is contended that the petitioners who are illiterates entrusted the matter to defendant No.2, when they were migrated to Tirupati. He further submits that defendant No.2 got addicted to all bad vices, did not pursue the litigation and never informed about the case to the petitioners.

7) Learned counsel for the respondents would submit that there is abnormal delay in filing the petition and the petitioners failed to

explain day to day delay and that the petitioners have filed the present petition only with a view to drag on the proceedings.

8) In *State of Bihar and others v. Kameshwar Prasad Singh and another*¹ the Apex Court held as under:

“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*² 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.

¹ (2000) 9 SCC 94

² (1987) ILLJ, 500 SC

- 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.
 - 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.”
- 9) In [State of Nagaland v. Lipok Ao and others](#)³ the Apex Court held as under:
- “Proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. What constitutes sufficient cause cannot be laid down by hard-and-fast rule section.”
- 10) From the judgments of the Apex Court referred to above, it is clear that delay can be condoned if the circumstances of the case indicate that meritorious matter was being 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

³ (2005) 3 SCJ 558

condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

11) In the instant case, the suit is filed for partition and separate possession. Substantial rights of the parties are involved in the property to be partitioned and the said suit came to be decreed on 23.08.2012. It is stated that the petitioners entrusted the matter to defendant No.2, while they migrated to Tirupathi in search of their livelihood. The petitioners came to know about the decree only when they received notices in final decree petition. Immediately thereafter, they filed the petition. In view of the judgments referred to above and taking into consideration the facts in issue and the nature of suit filed, the impugned order is liable to be *set aside* and the delay in filing the petition under Order IX Rule 13 of C.P.C. has to be allowed.

12) Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

21.03.2017
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