

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.784 OF 2015

ORDER:

This civil revision petition is filed under Section 115 of C.P.C challenging the order in I.A.No.812 of 2014 in O.S.SR.No.125 of 2013 dated 12.12.2014, whereby the petition filed for condonation of delay of 409 days in representing OSSR No.125 of 2013 was dismissed.

The petitioner filed main suit against the respondents for specific performance of agreement dated 28.12.2007 of plaint schedule property and the said plaint was returned with objections on 19.01.2013. However, the matter could not be represented by the petitioner on account of alleged sufferance of his mother from severe ill-health and other ailments. The petitioner shifted his mother to hospital at Hyderabad for better treatment. Therefore, in connection with her treatment, the petitioner used to shuttle between Rajahmundry and Hyderabad, thereby, he could not contact his counsel, so as to enable him to represent the returned plaint, as such, there is a delay of 409 days and prayed to condone the same.

O.S.SR No.125 of 2013 was filed for specific performance of agreement of sale dated 28.12.2007 and for other alternative reliefs. The Trial Court raised certain objections but, they were not complied with and represented within the specified time. The cause shown by the petitioner for his failure to represent the returned complaint is that his mother was suffering from old age ailments

and she was being treated at Hyderabad and thereby, he could not contact his Advocate during the interregnum period. The said fact was disputed by the respondent by filing a counter denying the medical treatment, besides raising several contentions.

The main cause shown by the petitioner is that, the petitioner's mother was suffering from serious ailment and treated at Hyderabad. But, no piece of paper is produced before the Court that she was treated at Hyderabad due to severe ill-health. In the entire affidavit, the petitioner did not disclose the details of illness or the name of the hospital, date of admission and date of discharge, except making a bald allegation that she was admitted in the hospital and treated for some time for severe ill-health. When the petitioner was able to shuttle between Rajahmundry and Hyderabad, nothing prevented him to talk to his Advocate and get his plaint resubmitted. But the petitioner exhibited sheer negligence in representation of the plaint and not prevented by a cause, muchless, sufficient cause which is beyond his control.

Undoubtedly, the Court cannot adopt pedantic approach while deciding application under Section 5 of Limitation Act. But, it is the duty of the petitioner to produce sufficient material before the Court to substantiate his contention and on mere asking that such abnormal delay cannot be condoned on the concept of substantial justice, complete justice.

The Supreme Court in **Lanka Venkateswarlu (D) by L.Rs. v State of A.P. and Ors.**, held as follows:

“We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts

such as “liberal approach”, justice oriented approach”, “substantial justice” cannot be employed to jettison the substantial law of limitation, especially in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any *lis* between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.”

In view of the law declared by the Apex Court, the Courts cannot jettison substantive law of limitation on the concept of substantial justice or complete justice and set-aside the order accepting any cause shown by the petitioner as ‘sufficient cause’. Hence, the Trial Court did commit no error warranting interference of this Court in I.A.No.812 of 2014 in O.S.SR.No.125 of 2013 dated 12.12.2014 and the petition is devoid of merits, consequently, the petition is liable to be dismissed.

In the result, the civil revision petition is dismissed.

Consequently, miscellaneous petitions, if any, pending in this petition, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:24.04.2017

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