

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.6396 of 2016

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908, (hereinafter, 'the Code', for brevity), by the unsuccessful petitioners/ appellants/ defendants is directed against the orders, dated 04.08.2016, of the learned IX Additional District Judge, Wanaparthy, passed in IA.No.245 of 2015 in un-numbered Civil Miscellaneous Appeal of 2016 filed under Section 5 of the Limitation Act, 1963, requesting to condone the delay of 267 days in preferring the said unregistered appeal.

2. I have heard the submissions of Sri U. Peddanna, learned counsel appearing for the revision petitioners/ defendants, ('the defendants', for brevity) and of Sri A. Kranthi Kumar Reddy, learned counsel for the respondent/ plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

In IA.No.294 of 2014 in OS.no.89 of 2014 on the file of the Court of the learned Senior Civil Judge, Nagarkurnool, by orders dated 13.11.2014, the learned Judge of the said Court granted a temporary injunction in favour of the plaintiff and against the defendants. Aggrieved thereof, the unsuccessful defendants preferred the unregistered CMA before the Court below. As a delay of 267 days had occasioned in preferring the said CMA, IA.No.245 of 2015 was filed for condonation of the said delay. That application was resisted by the plaintiff. On merits and by the orders impugned in this revision, the Court below dismissed the application and refused to condone the delay in preferring the CMA. Therefore, the aggrieved defendants are before this Court.

4. The case of the defendants in support of the request for condonation of delay, as stated in the affidavit of the 1st defendant, in brief, is as follows: - 'The defendants preferred the appeal against the orders of temporary injunction granted by the trial Court in IA.no.294 of 2014 in OS.no.89 of 2014. The defendants applied for certified copies of the order and decretal order of the trial Court; but, due to ill-health of the 1st defendant, that is, as he suffered from viral fever and cough, he could not contact the counsel in time for preferring the CMA. Further, the delay was caused in obtaining necessary documents from the authority concerned. The delay is neither intentional nor deliberate.'

5. The case of the plaintiff, in brief, is this: - 'The defendants are very much aware of the temporary injunction orders passed by the trial Court. They obtained certified copies of order and decretal order long time back; but, they have not filed the appeal before the Court below intentionally. The allegation that the 1st defendant suffered from ill health, that is, viral fever and cough is incorrect. No medical certificate is filed in support of the said contention. The appeal is intentionally filed with delay without explaining the delay. Hence, the petition is liable to be dismissed.'

6. Learned counsel for the defendants while reiterating their pleaded case mainly submitted that the trial Court allowed the application for temporary injunction filed by the plaintiff erroneously and against principles of natural justice, equity and good conscious; the said order is contrary to facts and law and is perverse; while granting the said order of injunction, the trial Court failed to see that the plaintiff suppressed the facts and came to Court with unclean hands; the order and decretal order of injunction granted by the trial Court are unsustainable; the defendants have got fair chances of success in the proposed CMA; only on account of 1st defendant's ill health, that is, as he had suffered from viral fever and cough, the civil miscellaneous appeal could not

be filed within time allowed under law though the certified copies of order and decretal order were obtained; further, the delay had occasioned in the process of the defendants securing certain documents from the concerned authorities for filing the CMA; therefore the delay may be condoned and an opportunity may be given to have the CMA disposed of on merits.

7. The learned counsel for the plaintiff forcefully contended that the petition is filed in a casual manner without offering any explanation much less valid explanation for the long delay and that, therefore, the trial Court is justified in refusing to condone the delay. He would further submit that a mere bald mention that the 1st defendant suffered viral fever and cough is no valid explanation for the long delay of more than 250 days; no medical certificate is filed in support of the said alleged contention; what are the documents that were applied for, what is their relevancy, and when and from whom the same were obtained and the other necessary details are not pleaded, the said reason is false and is a ruse to get over the laches and the long delay that had occasioned due to the deliberate and wilful conduct of the defendants.

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.

8.1 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

¹ AIR 2011 SUPREME COURT 1150

exercise discretion for the reason that whenever the court exercises discretion it has to be exercised judiciously.'

9. I have given earnest consideration to the facts and the submissions and also the legal position obtaining.

As rightly urged by the learned counsel for the plaintiff, the delay is a long delay of 267 days and except stating that the 1st defendant suffered from viral fever and cough, no details of the period of ill health, if any, are pleaded and no medical certificate is also filed. Coming to the other reason that the delay had occasioned in securing some documents, what is to be noted is that the defendants did not even plead as to what are the documents that were secured, what is their relevancy, and when and from whom the same were obtained and the other necessary details. According to the contentions of the plaintiff, any such documents are not referred to in the pleadings before the Court below and the said explanation is not true and only a ruse. A plain perusal of the affidavit filed in support of the application for condonation of delay reflects that the application is filed in a casual manner without giving any valid explanation, with necessary details, for the long delay. When the delay is a long delay of more than 250 days, such delay ought to have been explained by offering valid explanation, with all necessary details and not in a casual manner. The laconic pleading lays bare that the delay is wilful and deliberate and obviously, there is no explanation, much less valid explanation, for the long delay. As per settled law, 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 a bald statement in an application seeking condonation of delay and fails to substantiate the same, the Court ought to refuse to condone such delay or inordinate delay. 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 casual and 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. 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 petitioners-defendants, 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.

10. 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 years on the ground of lack of knowledge or failure of justice. It was

² 2014 (1) ALD 21 (SC)

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. 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 cited cases squarely apply to the facts of the instant case.

11. 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 Court below is justified, in the facts and circumstances of the case, in dismissing the application filed by the defendants 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.

M.Seetharama Murti, J

17.03.2017
Vjl

³ 2014 (4) ALD 1 (SC)