

HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL REVISION PETITION No. 4511 OF 2009

ORDER:

1. The revision petitioner aggrieved by the order dated 12.08.2009 passed in I.A.No.4269 of 2008 in ASSR No. 18165 of 2008 by the learned Principal District Judge, Ranga Reddy District at L.B. Nagar preferred present Civil Revision Petition besides other grounds on the ground that the order of the Court below if allowed to sustain would occasion failure and miscarriage of justice which would eventually result in irreparable loss and injury to the petitioner herein; that the said order is opposed to the very spirit and object of the provisions of Section 5 of the Limitation Act; that the Court below ought to have taken into consideration the contents of the affidavit filed by the petitioner in support of the condone delay application and that the petitioner has assigned sufficient reasons for condoning the delay in preferring the appeal.

2. It is further contended that it is the categorical case of the petitioner herein that the present Managing Committee had recently taken charge and the earlier Managing Committee did not inform about the suits filed against the Society and that the delay in filing the appeal suit was neither willful nor wanton.

3. Brief facts of the petition in I.A.No.4269 of 2008 in ASSR No.18165 of 2008 are that the present Managing Committee had taken charge recently and the earlier Managing

Committee did not inform about the suits being filed against the Society and that the present Managing Committee came to know about the same after receiving the notice in EP No.58 of 2008. Immediately thereafter, he has contacted the Counsel on record before the Trial Court, enquired about the suits pending against it, and collected the material papers from him.

4. The contention of the respondent is that the petitioner being Society shall maintain the records with regard to the particulars of the disputes of its properties and mere changing of Managing Committee of the Society is not a ground to condone the delay. Further, the suit was decreed on 23.01.2008. Even after obtaining the certified copies of judgment and decree, the petitioner did not file the appeal within 30 days from the date of obtaining judgment and decree. The petitioner did not furnish sufficient case for condoning the delay in preferring the appeal.

5. The Trial Court on consideration of the rival submissions and perusal of the record, dismissed the petition on the ground that the petitioner has not shown sufficient cause to condone the delay. It is further observed that a valuable right is accrued to the respondent due to the laches on the part of the petitioner in preferring the appeal within the time and that right cannot be taken away unless the Court satisfies that there was sufficient cause for condoning the delay.

6. Now the point that arise for consideration in view of the rival submissions of the parties is, *whether the petitioner has shown sufficient and reasonable cause for condoning the delay in preferring the appeal and whether the order of the trial Court can be sustained.*

7. The learned Counsel for the petitioner contended that the petitioner has shown sufficient cause for condoning the delay, more particularly, as there is change in Managing Committee, the newly elected Managing Committee has no knowledge about the pending suits preferred against it and that the earlier Managing Committee did not brought to the notice of present Managing Committee about the suits pending against the Society.

8. On the other hand, the respondent contended that the lower Court is perfectly right in holding that the petitioner failed to show sufficient cause for condoning the delay and therefore the order of the Court below is sustainable.

9. The undisputed facts are that the respondent herein filed suit O.S.No.2042 of 2005 against the revision petitioner for specific performance of agreement of sale which was decreed on 23.01.2008. Subsequently the respondent filed E.P.No.58 of 2008. The cause shown in the petition affidavit is that the present Managing Committee of the revision petitioner-Society has taken charge recently and the earlier Managing Committee did not inform about the suits pending against it and only after receiving

notice in E.P.No.58 of 2008, they contacted the Counsel on record before the trial Court, enquired about the suits, collected the material papers from the counsel in the lower Court, applied for certified copies of judgment and decree and filed the appeal along with a petition to condone the delay in preferring the appeal.

10. It is a fact as contended by the respondent in the counter that the revision petitioner did not state as to the date on which he received notice in E.P.No. 58 of 2008, the date on which he contacted the counsel after receiving notice, when he applied for certified copies of judgment and decree, on which date he received certified copies and filed the appeal with a petition to condone the delay.

11. Learned Counsel for the revision petitioner contended that the Court below erred in dismissing the impugned application without furnishing substantive and sufficient reasons; whereas, learned Counsel for the respondent contended that the revision petitioner has not shown any sufficient cause to condone the inordinate and abnormal delay of 258 days in preferring the appeal.

12. A perusal of the record goes to suggest that the respondent herein filed O.S.No.2042 of 2005 for specific performance of the agreement of sale directing the revision petitioner to execute the registered sale deed in respect of the suit

schedule property. The said suit was decreed on 23.01.2008. Thereafter the respondent filed EP.No.58 of 2008. The contention of the revision petitioner is that after receiving the notice in EP.No.58 of 2008, they came to know about the passing of decree in the suit and till then, they have no knowledge of the suit proceedings. Thereafter only, they obtained certified copies of the judgment and decree and filed the appeal along with condone delay application, which was dismissed through the order under revision.

13. In KRISHI UTPADAN MANDI SAMITI AMROHA Vs. GANGA RAM (AIR 1992 ALLAHABAD 275), the Allahabad High Court held :“ *Now-a days Central Government, State Government or Corporate bodies having instrumentality of the State, are emerging as litigants and fighting as canta-kerus in quite high percentage as compared to individual litigants, therefore in such delayed matters certainly no person as an individual is affected but the public interest suffers, and hence it is for such public bodies, State Government or Central Government as the case may be to get the cause of delay probed fastening liability upon the officer concerned so as to proceed against such irresponsible officer departmentally and recover caused to the appellant on account of his inaction or gross negligence.*”

It was further held that *contradictory statements, gross negligence, absence of diligence and deliberate inaction apparent*

from depositions of appellant/petitioner cannot be extended for condonation of delay under Section 5 of the Limitation Act.

14. In the case of D.GOPINATHAN PILLAI Vs. STATE OF KERALA {(2007) 2 SCC 322}, the Apex Court held that delay cannot be condoned merely on sympathetic ground when mandatory provision not complied with and delay not properly, satisfactorily and convincingly explained. It was further held that delay cannot be condoned without assigning any reasonable, satisfactory, sufficient and proper reasons.

15. In ORIENTAL AROMA CHEMICAL INDUSTRIES LIMITED Vs. GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION AND ANOTHER {(2010) 5 SCC 459} the Apex Court observed that it has to be seen whether the applicant to the condone delay petition had offered any plausible/tangible explanation for the long delay in filing the appeal and the Court below was justified in condoning the delay.

16. In CICILY KALLARACKAL Vs. VEHICLE FACTORY {(2012) 8 SCC 524} also the Apex Court held that condonation of inordinate delay without sufficient cause would amount to substitution of period of limitation prescribed by statute to file appeal and holding so, declined to condone the delay for insufficiency of reasons.

17. In UNION OF INDIA AND OTHERS Vs. NRIPEN SARMA {(2013) 4 SCC 57}, the appellant has preferred appeal against the final judgment dated 10.09.2007 before Supreme Court. The Apex Court observed that the appeal is barred by limitation of 114 days. There is no satisfactory explanation for condonation of delay.

18. Finally, in UNION OF INDIA AND OTHERS Vs. SHRI HANUMAN INDUSTRIES AND ANOTHER {(2015) 6 SCC 600}, the Apex Court held that it is a fundamental legal dictat that delay has to be explained by cogent, convincing and persuasive explanation to justify condonation thereof. Considering the totality of the facts and circumstances therein, the Apex Court held that the respondents therein in view of their deliberate laches, negligence and inaction have disentitled themselves to the benefit of the adjudication in the earlier lis. In the accompanying facts and circumstances of the case, it would be iniquitous and repugnant as well to the public exchequer to entertain the belated claim on the basis of the doctrine of promissory estoppel which is even otherwise inapplicable to the case on hand.

19. In the facts and circumstances of case on hand, it is to be seen that suit was decreed on 23.01.2008. As can be observed, the revision petitioner did not prefer appeal within thirty

days from the date of obtaining certified copies of judgment and decree and even there is two months delay thereafter in preferring the appeal. The contention of the revision petitioner is that the newly constituted Managing Committee has no knowledge of decree passed in the suit O.S.No.2042 of 2005 and it has come to know the same only after receiving the notice in execution proceedings. EP is of the year 2008 whereas appeal ASSR No.18165 of 2008 along with condone delay application I.A.No. 4269 of 2008 was filed two months after obtaining the certified copies of judgment and decree. There is 69 days delay in preferring the appeal even after certified copies of the judgment and decree were made ready.

20. Certified copies of judgment and decree goes to suggest that the petitioner applied for certified copies of judgment and decree in O.S.No.2042 of 2005 on 31.07.2008 and the same were made ready on 13.08.2008, but the petitioner preferred the appeal on 21.10.2008. Absolutely there is no reason for the delay in filing the appeal even after receiving the certified copies of judgment and decree in the suit. The record further goes to suggest that inspite of granting ample time for adducing evidence, granting number of adjournments, it could not enter the witness box to disprove the case of respondent. The petition affidavit is silent with regard to the date on which new Managing Committee took charge, on which date the petitioner has received notice in

EP, on which date it contacted the counsel after receiving the notice etc.

21. It is a fundamental dicta that the delay has to be explained by cogent, convincing and persuasive explanation to justify condonation thereof. However, in the facts and circumstances of the present case, the petitioner has deliberate laches and negligence in approaching the Court immediately after the decree in the suit or immediately after obtaining the certified copies of the judgment and decree. It is only when the respondent filed EP and attempted to execute the decree, the petitioner has filed the appeal with delay petition. There is absolutely no satisfactory, cogent convincing explanation for condoning the delay.

22. For the foregoing discussion and in the result, the Civil Revision Petition fails and is accordingly dismissed. No order as to costs.

23. Miscellaneous petitions pending consideration if any in the Civil Revision Petition shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 11th December, 2017.
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