

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

MACMAMP NO.3007 OF 2017

AND

MACMA NO.1634 OF 2017

ORDER:

MACMAMP No.3007 of 2017 is filed under Section 5 of Limitation Act to condone delay of 133 days in representing the returned miscellaneous appeal against the order and decree dt.03.11.2016 in O.P.No.674 of 2012 on the file of the MACT-cum-II Addl.Dist.Judge, Parvathipuram, Vizianagaram District. But, the affidavit is silent with regard to the delay except explaining the delay in filing the appeal. In para 5 of the affidavit, a specific allegation is made which is extracted as hereunder for better appreciation:

"I submit that the court of Motor Accidents Claims Tribunal-cum-II Addl.District Judge, Parvathipuram, Srikakulam District pronounced the order dated 03.11.2016 in O.P.No.674 of 2012. My counsel applied for the certified copies of the order and decree on 10.11.2016 and the same was kept ready by the lower court on 18.01.2017. But I failed to contact my counsel as I was busy in searching employment at various places and failed to enquire regarding the progress of the case. On 30.07.2016 only I met and came to know about the result of the case as such I am filing the above C.M.A. and without further delay this Hon'ble Court I will suffer irreparable loss and injury.

Condone delay of representation (133) days caused in filing the above C.M.A. against the order and decree dated 03.11.2016 in O.P.No.674 of 2012 on the file of the MACT-cum-II Addl.Dist.Judge, Parvathipuram, Srikakulam District, pass such other order or orders as the Hon'ble court may deem fit and proper in the circumstances of the case, in the interest of justice."

The affidavit is bereft of any reasoning much less sufficient cause and in the absence of any cause, this court cannot conclude that the petitioner was prevented by a cause which is beyond his control to condone delay of 133 days in representation of the appeal.

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, such abnormal delay cannot be condoned on the concept of substantial justice, complete justice.

The Supreme Court in *Lanka Venkateswarlu (D) by LRs. 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, this court cannot accept any cause shown by the petitioner as 'sufficient cause' to condone delay in representation and the petition is devoid of merits, and is liable to be dismissed.

In the result, MACMAMP No.3007 of 2007 is dismissed. Consequently, MACMA No.1634 of 2017 is rejected. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:19-07-2017
Ccm



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