

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4708 of 2016

ORDER:

The unsuccessful petitioners filed this Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908, ('the Code', for brevity) having been aggrieved of the order, dated 09.09.2016, of the learned III Additional District Judge, Gadwal, passed in IA.no.185 of 2015 in unregistered Appeal Suit of 2016 filed under Section 5 of the Limitation Act, 1963, ('the Act', for short), requesting to condone the delay of (377) days in filing the annexed appeal suit.

2. I have heard the submissions of Sri K. Venkatesh Gupta, learned counsel for the revision petitioners-appellants-defendants and Sri Y. Hema Chander, learned counsel for the respondent-plaintiff. I have perused the material record.

3. The parties shall hereinafter be referred to as they are arraigned in the Original Suit.

4. The case of the defendants, as stated in the affidavit filed by the 1st defendant, in support of their request for condonation of delay in preferring the first appeal, in brief, is as follows:

The plaintiff filed the suit against the defendants, who are the legal heirs of one Gokarappa, for recovery of an amount of Rs.4,62,000/- with subsequent interest due by the said Gokarappa, from the properties of the deceased Gokarappa now in the hands of the defendants and for costs. The suit was decreed as prayed for on 04.09.2014. The 1st defendant has to bear the burden of the entire family as all the family members are depending on her. She faced many difficulties in securing the money towards Court fee required to be paid for filing the first appeal. She is an illiterate poor widow

and is not aware of the limitation and Court fee aspects. Due to her old age ailments and illiteracy and financial difficulty in securing Court fee, the annexed appeal could not be filed within the period of limitation. The delay in filing the appeal is not intentional but had occasioned only for the aforesaid *bona fide* reasons. The defendants have fair chances of success in the appeal. Hence, it is just and necessary to condone the delay of (377) days in filing the appeal.

5. The plaintiff filed a counter, *inter alia*, questioning the maintainability of the petition and contended that the defendants failed to establish the alleged ill health of the 1st defendant and also the penury of the defendants and prayed to dismiss the petition.

6. At the hearing before the Court below, no oral and documentary evidence was adduced. On merits and by the order impugned in this revision, the Court below dismissed the petition. The Court below did not accept the ground of ill-health as no medical certificate of the 1st defendant was filed and also did not accept the other ground that the 1st defendant could not secure the money for payment of Court fee as no request was made to the legal services authority to exempt them from paying the Court fee by availing the legal aid services. Hence, the defendants preferred this revision.

7. The learned counsel for the defendants while reiterating the pleaded case of the defendants, which is stated supra, in detail, *inter alia*, contended as follows:

The Court below ought to have seen that the 1st defendant is a widow and the defendants 2 and 3 are her married daughters and that the 4th defendant had just attained majority and as such they have no other male assistance to assist them to file the appeal within time allowed under law. The Court below ought to have seen that the dismissal of the petition would cause great prejudice to the defendants as huge amount of money was involved in the

/is and that on the other hand no prejudice would be caused to the plaintiff if the delay is condoned by imposing compensatory costs. The Court below ought to have seen that the delay in filing the appeal is neither intentional nor wilful but the delay had occasioned only as the 1st defendant is an illiterate poor widow having no male assistance and financial capacity to secure the amount required to meet the Court fee for filing the first appeal. The Court below ought to have given the defendants an opportunity to have the appeal adjudicated on merits by condoning the delay.

8. The learned counsel for the plaintiff while supporting the orders of the Court below contended that the Court below considered the two grounds that were stated by the 1st defendant for condonation of delay and also her explanation in support of the said grounds before rejecting the said grounds as not valid and rightly held that sufficient cause was not shown for condonation of delay and that the defendants failed to substantiate the grounds by producing a medical certificate regarding the illness of the 1st defendant and any other document to show the poor financial condition of the 1st defendant and her family. He further pointed out that this Court while ordering notice before admission on 30.09.2016 granted interim stay of the execution of the decree in the suit on the defendants depositing 1/4th of the entire decree debt besides costs within 6 weeks from that day, but, the defendants did not deposit the said amount and that therefore they have no right to request the Court to allow the petition for condonation of delay subject to imposition of conditions. He therefore prayed for dismissal of the revision petition.

9. I have bestowed my attention to the facts and submissions.

10. 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.

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

12. Reverting to the facts of the case, admittedly, in the suit filed by the plaintiff against the defendants, who are legal heirs of Gokarappa, for recovery

¹ AIR 2011 SUPREME COURT 1150

of money due, by the said Gokarappa, the defendants entered appearance and after full fledged trial, the suit was decreed on merits and a decree was granted for recovery of the amount with interest and costs from the properties of late Gokarappa in the hands of the defendants. Though the decree was granted on 04.09.2014, the defendants did not prefer the appeal within the time allowed under law. The appeal was preferred with a delay of 377 days, that is, more than a period of one year. In the grounds urged in support of the condonation of delay, it is only stated that the 1st defendant is an illiterate poor widow and that her two daughters are married and her son had just attained majority and therefore there is no male assistance; but it appears that the 4th petitioner, who is the elder son, was aged 20 years and the younger son was aged 17 years as on the date of filing of the application for condonation of delay. It is not stated as to whether her elder son is an earning member or not. In-fact, the memorandum of grounds of appeal filed on 13.10.2015 discloses that the Mandal Legal Services Authority issued a fee exemption certificate to the defendants-appellants exempting payment of court fee of Rs.7,046/-. It is not stated as to when such exemption was sought for and was granted. Except baldly stating that she is an illiterate widow and that she has no male assistance no other explanation much less valid explanation was offered for the long delay of more than one year in filing the first appeal.

13. Before proceeding further, be it noted that this Court, on 30.09.2016, while ordering notice before admission, having regard to the submission of the learned counsel for the revision petitioners that E.P.No.4 of 2015 seeking attachment of the landed property is filed, granted interim stay subject to the condition of the revision petitioners-defendants paying 1/4th of the entire decree debt besides costs within six weeks from that day. It is not in dispute that the said amount is not paid till date. In the light of the said fact, the alternative submission made by the counsel for the defendants that the petition for condonation of delay may be allowed after imposing compensatory

costs, needs no countenance as rightly urged by the learned counsel for the plaintiff. Even during the course of hearing, the defendants did not offer to deposit a part of the decretal amount as a condition precedent for allowing their petition filed for condonation of delay in preferring the appeal.

14. In that view of the matter, this Court finds that there is no justification for seeking condonation of the said 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 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. 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. Hence, this Court cannot condone the delay in a case where the Court concludes that there is no justification for the delay. p

15. The learned counsel for the defendants placed reliance on a decision of this Court in *Padigi Pedda Ranga Reddy v. Padigi Sreerami Reddy*² in support of the contention that delay can be condoned after imposition of costs. A perusal of the cited case would show that this Court accepted the explanation in the affidavit filed in support of the petition that the counsel of the petitioners therein underwent knee operation at Hyderabad and hence set aside the *ex parte* preliminary decree granted in a suit for partition. Thus, the decision in the cited case turned on the facts peculiar to that case. Be that as it may.

16. In the decision in *Esha Bhattacharjee V/s Managing Director of Raghunathpur Nafar Academy and others*³, the Supreme Court having referred

² LAWS (APH)-2016-9-7

³ 2014 (1) ALD 21 (SC)

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 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*⁴ 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 above referred cases squarely apply to the facts of the instant case. 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 delay cannot be condoned as there is no justification for the delay and that in the facts and circumstances of the case, the Court below is justified in dismissing the

⁴ 2014 (4) ALD 1 (SC)

application filed by the petitioner for condonation of delay and that there is no merit in the revision.

17. 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.

31st January, 2017
Vjl

M. SEETHARAMA MURTI, J

