

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.5529 of 2015

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908, is filed by the revision petitioner/husband, assailing the order, dated 02.11.2015, of the learned Judge, Family Court, Hyderabad, passed in I.A.No.197 of 2015 in O.P.No.1333 of 2012 filed by the petitioner/husband under Section 5 of the Limitation Act, 1963, to condone the delay of 586 days in filing the application to set aside the *ex parte* order and the decree dated 19.11.2013 in the aforestated original petition.

2. I have heard the submissions of Sri P.Raja Sripathi Rao, learned counsel for the revision petitioner/husband and of Sri K.K.Waghray, learned counsel for the respondents. I have perused the material record.

3. Sans unnecessary details, the case of the petitioner/husband, in brief, is as follows:-

The 1st respondent herein, who is the wife of the revision petitioner, filed the OP for grant of maintenance to her and her children. The petitioner/husband, having entered appearance sought time for filing counter. He was eventually set *ex parte*. Thereafter, on 19.11.2013, an *ex parte* order and decree came to be passed awarding maintenance to the respondents 1 to 3 herein. Later, on filing of the execution petition, the salary of the petitioner/husband was attached. The petitioner was surprised to know that an amount of Rs.7,500/- was deducted from his salary pursuant to the attachment order passed by the Court on 19.11.2013. He immediately approached the counsel and confronted him with the order of attachment. On that, his counsel pleaded ignorance of the passing of the orders in the main OP as well as in the execution petition. In fact, the petitioner appeared before the trial Court on the date of first hearing of the OP and entered

appearance through his counsel. The said counsel told the petitioner that he will inform him as and when his counter is to be filed in the OP. He also stated that conciliation meeting is not required. Though the petitioner repeatedly followed up with the counsel by making visits to his office and making phone calls to his mobile, the counsel kept the petitioner in darkness. Even after the orders in the execution petition, his counsel repeatedly gave assurances that he will take necessary steps for restoration of the OP and for obtaining the orders of stay in the execution proceedings, if any, filed in future. Believing his version, the petitioner did not follow up the matter with the counsel till the notices were received in the execution petition no.4 of 2015. Thereafter, he realized that his counsel played fraud upon him by colluding with the respondents 1 to 3 herein. Therefore, he engaged another counsel; and, on verification of the records in the Court and after obtaining necessary information, an application is filed to set aside the *ex parte* decree and the order passed in the OP. The present petition is filed for condonation of delay, as the delay had occasioned in the stated circumstances. The petitioner has not fathered respondents 2 and 3 and they are not his children. If the delay is condoned and an opportunity is given to the petitioner to contest the OP by setting aside the *ex parte* decree and order, no prejudice would be caused to the respondents; on the other hand, if the delay is not condoned, the petitioner would suffer serious and irreparable loss.

4. The case of the respondents, apart from the denial of the allegations made in the petitioner's affidavit, in brief, is as follows:

The contents of the affidavit of the petitioner are false. The contentions of the petitioner are unfair. There are no grounds made out and no sufficient cause is shown for condonation of delay. The petition is devoid of merit. The grounds urged do not constitute valid and sufficient grounds for condonation of delay. The allegations are invented for the purpose of creating grounds for filing the petition. The petitioner contested the

execution petition as well as cheque petitions. The conduct of the petitioner sufficiently establishes the negligence on the part of the petitioner. The petitioner is not entitled to blame his counsel. The petition is liable to be dismissed as no sufficient cause is shown for condonation of delay.

5. At the hearing, the learned counsel for the petitioner/ husband, while reiterating the pleaded case of the petitioner/ husband, which is stated *supra*, in detail, stated that the salary of the petitioner was attached for no fault of the petitioner and that the maintenance amount is regularly being paid and that only on account of the fact that the counsel had let the party down, an *ex parte* decree has come to be passed and that if the *ex parte* decree is set aside after condoning the delay, no prejudice would be caused to the respondents.

6. Per contra, the learned counsel for the respondents, while reiterating the pleaded case of the respondents, would submit that the petitioner entered appearance in the execution petition and also contested the execution petition and that, in fact, the wife filed two cheque petitions and that after contest, both the cheque petitions are allowed and that later, the petitioner/ husband obtained the certified copies on 01.05.2015 and filed the present petition on 29.06.2015 and that as on today, a sum of rupees ten lakhs and odd is due towards arrears and maintenance and that the conduct of the petitioner is *mala fide* and there are no *bona fides* on the part of the petitioner.

7. I have given detailed and thoughtful consideration to the facts and submissions.

8. 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.'

9. The petitioner admittedly entered appearance in the OP and later remained *ex parte* by not filing his counter. Subsequently, the *ex parte* decree was passed in the OP. His main contention is that having reposed confidence in his counsel and on his advice, he did not personally prosecute his defence and that his counsel played fraud on him and therefore, the *ex parte* decree has come to be passed. It is to be noted that the *ex parte* decree was passed on 19.11.2013. Subsequently, when execution petition

¹ AIR 2011 SUPREME COURT 1150

was filed and his salary was attached, he was admittedly made aware of the *ex parte* decree. Even afterwards, he did not take steps promptly for setting aside the *ex parte* decree passed in the OP. A casual explanation was offered by stating that the petitioner's counsel let him down by playing fraud upon him. He did not plead in his counter the details as to when he engaged another counsel. Thus, his affidavit lacks in material particulars which are necessary to show the sufficient cause. Further, the petitioner contested the cheque petitions in November, 2014 is not in dispute. Therefore, the petitioner is aware of the *ex parte* decree when once his salary was attached in the execution of the *ex parte* decree. Nevertheless, no explanation whatsoever was offered for the delay from the date of the *ex parte* decree till the application is filed for condonation of delay. In any view of the matter there is no explanation for the delay from November, 2014 till the application for condonation of delay was filed in June, 2015. Thus, 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. 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 petitioner who is seeking condonation of delay had failed to demonstrate that the cause that had prevented her from pursuing the remedy had sprouted before the expiry of limitation and continued and

prevented him from taking necessary steps till the date the application is filed.

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

11. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

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

04th January, 2017
Bv



M. Seetharama Murthi, J