

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4021 of 2017

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, by the petitioner-appellant-plaintiff is directed against the orders, dated 03.07.2017, of the learned Chief Judge, City Civil Court, Hyderabad, passed in IA.No.2079 of 2017 in CMA(SR).No.10353 of 2017.

2. I have heard the submissions of Sri J.U.M.V. Prasad, learned counsel for the revision petitioner-appellant, and of Sri Sundar Kanaparthi, learned counsel for the respondents-defendants. I have perused the material record.

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

The plaintiff brought the suit against the defendants for perpetual injunction. Along with the suit, the plaintiff filed an interlocutory application (IA.No.460 of 2016) seeking a temporary injunction. The trial court dismissed the said application on merits. Aggrieved thereof, the plaintiff preferred a CMA before the Court below. However, as there was delay in preferring the said appeal, the plaintiff filed IA.No.2079 of 2017 for condonation of delay in filing the said appeal, *inter alia*, pleading that due to ill-health, namely, Bone TB and medical treatment for the said ailment, the appeal could not be preferred within the time allowed under law. The defendants resisted the application for condonation of delay by filing a counter, *inter alia*, stating that the cause shown was invented and that no medical record is produced in support of the explanation that the petitioner suffered the stated illness. The Court below, having noted that the delay is abnormal and that no documents are filed to substantiate the explanation for delay, dismissed the petition. Therefore, the plaintiff is before this Court.

4. Both the learned counsel made submissions in line with the pleadings of the parties, which are briefly stated supra.

5. Learned counsel for the revision petitioner/plaintiff submits *inter alia* that the explanation namely the ground of ill health stated in the application is a sufficient cause for condonation of delay and prays for granting an opportunity to the plaintiff to have the cause decided on merits by setting aside the impugned order and directing the court below to hear and dispose of the CMA on its merit.

6. Learned counsel for the respondents-defendants would submit that the suit is of the year 2016 and that the trial is in progress before the trial Court and that the plaintiff is not allowing the trial to progress and is dragging on the matter and that in the facts and circumstances the order impugned is justified.

7. I have given earnest consideration to the facts and submissions.

8. In the considered view of this Court when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred and hence, giving an opportunity to the revision petitioner-plaintiff to have the cause decided on merits sub-serves the ends of justice. Therefore, instead of rejecting the proposed appeal at the threshold by not condoning the delay, it is apposite to condone the 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. 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, however, be equated with doing injustice to the other party and, while condoning the delay, the Court should not forget the opposite party altogether. 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. Reverting to the case facts, on consideration of the explanation that the delay occasioned on account of ill health, namely, Bone TB and medical treatment for the said ailment, this Court finds that a liberal view can be taken and the delay can be condoned to give an opportunity to have the matter decided on merits.

9. On the above analysis, this Court finds that the revision petition can be allowed and the relief can be granted.

10. In the result, the Civil Revision Petition is allowed and the order, dated 03.07.2017, of the learned Chief Judge, City Civil Court, Hyderabad, passed in IA.No.2079 of 2017 in CMA(SR).No.10353 of 2017 is set aside. As a sequel, the said petition is allowed and the delay in filing the CMA before the Court below is condoned. Accordingly, the Court below is directed to register the CMA, if it is otherwise in order, and hear and dispose of the same on its merit and in strict accordance with the procedure established by law as expeditiously as possible and preferably within one (01) month from the date of receipt of a copy of this order.

There shall be no order as to costs.

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

JUSTICE M. SEETHARAMA MURTI

18.08.2017
Vjl