

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4063 of 2011

ORDER :

The revision petitioner is Sri Uma Kotilingeswara Swamy Vari and Sri Seetha Rama Swamy Vari Devasthanam, Kotilingalapeta, Rajahmundry, represented by its Executive Officer. Impugning the application to condone the delay of 180 days in filing the first appeal against the decree and judgment in O.S.No.1100 of 2005 of the I-Additional Junior Civil Judge, Rajahmundry, dated 21.06.2010, before the District Court, Rajahmundry, in I.A.No.172 of 2011 in A.S.(S.R.)No.12227 of 2010 dated 28.06.2011 against the plaintiffs, the revision is maintained.

2. The contentions in the grounds of revision vis-à-vis the oral submission of learned counsel for the revision petitioner are that the Court below ought to have seen that the decree in the suit was passed on 21.06.2010 and certified copy applied within no time thereafter and after copies made ready on 16.07.2010, since the Manager of the Executive Officer of the Temple has to obtain permission from the Deputy Commissioner, Endowments, Kakinada, under whose control the Temple is having been classified under Section 6(1)(b) of the Endowments Act 30, 1987, applied and made efforts to obtain permission and it is in according of permission and in the process of administrative delay, the delay of 180 days is occurred, which is neither willful nor unjust and ought to have seen that proper and

pragmatic approach is required to be adopted for the delay, at best to compensate by costs in exercise of judicial discretion that too when the petitioner cannot directly file the appeal without obtaining administrative sanction and permission for which he applied and the reasons not within his control in not granting immediately the permission to file appeal by the superiors. Hence, to allow the revision. Learned counsel for the petitioner Temple reiterated the same.

3. Whereas it is the submission of learned counsel for the respondent that the impugned order no way requires interference since supported by reasons after scanning the facts with reference to law and thereby sought for dismissal of the revision within its limited scope of interference.

4. Heard and perused the material on record.

5. Pursuant to the decree in O.S.No.1100 of 2005 dated 21.06.2010 of the I-Additional Junior Civil Judge, Rajahmundry, execution petition in E.P.No.181 of 2010 was filed to obtain registered sale deed to be executed and when the matter is posted to 24.06.2011, it is in the meantime, the J.Dr. filed the appeal with delay condonation application. It is taken one of the grounds opposing the delay condonation by the respondents saying there is no any supporting material and there are no merits to condone the delay. As referred supra in the grounds of revision, that were in fact reiterated from the affidavit petition in condoning the delay, of it is not within

his control, beyond for the certified copy applied and obtained, and with no lapse of time, applied for permission to accord sanction to prefer appeal and in that process there is administrative delay of the departmental lapses, therefore, the delay to be condoned.

6. The lower Court observed that such negligence of the officials in according sanction under the inter-departmental consultations showing a cause as if beyond control cannot be condoned when the minimum care and caution required from the said procedure called as red-tapism, though for no distinction between the Government and the private individuals, by any rule or law, to consider the same even certain formalities are required to be complied in obtaining prior permission to maintain the proceedings and by referring to certain extents, in so observing in saying the affidavit of the Executive Officer of the Temple is, after certified copy obtained, he applied for permission to file appeal and recently he obtained the permission, from which the appeal is cause filed, which is nothing but negligence on the part of the officials and for such inaction, there is no immunity, much less to consider even from liberal approach as sufficient cause from the delay in discharging of the functions by the officials and under any stretch of imagination cannot be said to be a cause to consider as beyond control of the petitioner-Executing Officer of the Temple in dismissal of the application and the same is subject matter of revision.

7. Heard both sides.

8. Perused the material on record.
9. Among the decisions placed reliance, the Apex Court's expression in **Nav Rattanmal and ors. v. State of Rajasthan**¹, observed the following:

“It may be mentioned that in the case of governmental machinery, it is a known fact that it does not move as quickly as in the case of individuals. Apart from the delay occurring in the proper officers ascertaining that a cause of action has accrued- Government being an impersonal body, before a claim is launched there has to be inter- departmental correspondence, consultations, sanctions obtained according to the rules. These necessarily take time and it is because of these features which are sometimes characterised as red-tape that there is delay in the functioning of government offices.”

10. In fact, this expression says the ground relied of the known fact of the Government machinery in taking decisions does not move so normal as individuals and in that process delay may occur from the Government, being impersonal body, from that inter-departmental consultations and sanctions as per rules and procedure contemplated, which may necessarily take time and it is because of these features which are sometimes characterized as red-tape that there is a delay in the functioning of Government Offices. In fact, this expression one way says, the Court has to take judicial notice of this factum of delay generally occur in the inter-departmental correspondence in certain institutions, Government entities and establishments before launching proceedings from the inter-departmental consultations,

¹ AIR 1961 SC 1704

correspondence and sanction/obtain permission as per the rules. This expression no way say once these inter-departmental correspondence and the procedures causes delay can never be condoned, but for where it is deliberate and untenable from the deliberate inaction. Here, it is not such a case. Even coming to the Division Bench expression referred of **State of Andhra Pradesh represented by its Secretary to Government, Roads and Buildings Department v. A.Murali Madhava Rao and others**², what is observed is existence of sufficient cause and inordinate delay, consideration of prejudice to other side no way a relevant fact and such cases call for a more cautious approach and though short delay deserves liberal approach and no hard and fast rule can be laid down as the Courts have to exercise the discretion in each case on facts and circumstances to render substantial justice, which is prime importance. It is further observed that it is not length of the delay, but existence of sufficient cause for the delay or not is criteria. Even in the other decision referred of the Apex Court in **Lanka Venkateswarlu (died) by L.Rs. vs. State of A.P. and others**³, what is observed is where the Court concludes that there is no justification for the delay in rendering substantial justice in liberal approach cannot be employed to jettison the substantial law of limitation, however a judicial balance and restraint while adjudicating the lis between the parties is required and the discretionary power in condoning the delay to be exercised in a

² 2009 (3) ALT 637 (D.B.)

³ 2011 (1) U.P.L.J. 242 (SC)

systematic manner informed by reason. From the other judgment referred of a Single Judge expression of this Court in **Srinivasa Book Depot, Book Sellers, Nizamabad and others v. Bank of India, Kumargally Branch, Nizamabad**⁴, what is observed in its facts saying there is no proper explanation for the delay of 714 days to consider on the part of the Bank with the averments of the alleged illness of the advocate, the principle laid down from several expressions is the Courts have to adopt liberal approach in condoning the delay, particularly where public properties or public funds involved and it is difficult to generalize a proposition and relieve the institutions from the responsibility and obligation to assign reasons. However, the question of liberal approach or pragmatic approach arises if only there are certain reasons for the delay to condone and in the absence of reasons, the delay cannot be condoned. In fact, even the Apex Court's expression by scanning the law in **Pundlik Jalam Patil (D) by LRs v. Executive Engineer, Jalagaon Medium Project and another**⁵, it is observed that, it is true when the State and its instrumentalities are the applicants seeking condonation of delay and they may be entitled to certain amount of latitude though the law of limitation is same for citizen and for Governmental authorities and that the Limitation Act does not provide for a different period to the government in filing appeals or applications as such. However, it would be a different matter where the Government makes out a case

⁴ 2003 (1) ALD 126⁵ 2008 (6) ALT 38 (SC)

where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes. In a given case if any such facts are pleaded and proved they cannot be excluded from consideration of go into the judicial verdict.

11. At the cost of repetition, affidavit petition of the Executive Officer of the Temple shows pursuant to the decree dated 21.06.2010, certified copy applied for it and same was made ready and obtained on 16.07.2010 and immediately, as the permission of higher authorities is required to obtain to maintain appeal from the sanction, it was applied and it is only recently the permission accorded is received and it is thereby, the appeal could not be filed and the delay occurred therefrom is to be condoned. A perusal of the affidavit petition though short, from the above reasons clearly demonstrate, but for at best of required to give more clarity of the dates of when sanction accorded and communicated, if any, shows the circumstances beyond the control of the appellant-revision petitioner in filing the un-numbered appeal with the delay of 180 days of earlier could not file. The expressions of the Apex Court referred supra clearly say a liberal and pragmatic approach that is required in delay condonation applications, particularly in Government or other entities, where there is a correspondence required from inter-departmental sanctions and according permissions to file the legal proceedings, from there perusal of the existence of cause of action and sustainability of the appeal or

claim in the event it is filed otherwise wasting the money etc., It is not to be regarded always from the delay in according permission from the inter-departmental correspondence as a red-tapism and merely because there is no distinction between claims of private entities or other governmental authorities that reasons to obtain permission which caused delay cannot be ignored is the settled law from the expressions supra. Once such is the case, the trial Court is not just in attributing malafides or saying lack of bonafides in filing the appeal with delay condonation for 180 days apart from mere length of period is not criteria, but for just cause shown or not, and the circumstances explained as beyond control of appellant, that itself is to be regarded as just cause. The expression of the Apex Court in **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy**⁶, particularly by scanning the law with observations at para 21.1 and 4 of the approach should be liberal, pragmatic, justice- oriented and non-pedantic and not to presume deliberate causation of delay unless gross negligence on the part of party or counsel.

12. Having regard to the above, at best, the lower Court should have been asked for adducing evidence to prove the factum with production of any inter-departmental correspondence material to substantiate the delay of 181 days sought, rather than dismissing the application. Thereby the impugned order is liable to be set aside.

⁶ 2013 (12) SCC 649

13. Accordingly and in the result, the revision is allowed setting aside the dismissal order of the lower Court in I.A.No.172 of 2011 in A.S.(S.R.)No.12227 of 2010 on the file of the District Judge, Rajahmundry, by restoring the petition and un-numbered appeal by directing the lower Court to permit the parties to adduce any evidence to prove the factum of existence of sufficient cause or not to condone the delay from the liberal and pragmatic approach to adopt for deciding a fresh, the application to condone the delay.

14. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dt: 20-01-2017

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Dr. B. SIVA SANKARA RAO, J

