

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2830 OF 2017

ORDER:

This petition, under Article 227 of the Constitution of India, is filed challenging the order, dated 16.03.2017 in I.A.No.5866 of 2016 in A.S.S.R.R.No.25964 of 2010 passed by the Chief Judge, City Civil Court, Hyderabad.

The said I.A. was filed by the petitioner/appellant under Order 41 Rule 3-A CPC read with Section 5 of the Limitation Act to condone the delay of 39 days in preferring the appeal on the ground that he had suffered from jaundice. Upon hearing the arguments of learned counsel for the petitioner and the respondents, the appellate Court disbelieved the ground urged before the Court and declined to condone delay of 39 days in preferring the appeal as the petitioner did not file any documentary proof in support of the ground urged that he was suffering from jaundice. Section 5 of the Limitation Act and Order 41 Rule 3-A CPC enables the Court to condone delay in preferring the appeal or any proceedings if the petitioner was able to satisfy the Court that he was prevented by sufficient cause. The word 'sufficient cause' was not explained either in the Limitation Act or in CPC to exercise power under Order 41 Rule 3-A CPC or under Section 5 of Limitation Act. The word 'sufficient cause' can be said to be which cause which is beyond reasonable control of the petitioner. Therefore, it is for the petitioner to prove that he was prevented by a cause which is beyond his reasonable control.

In the present case, the petitioner's contention is that he had suffered from jaundice and the affidavit is silent whether he was treated by Alopathy doctor or by any other doctor or by consuming any other medicine. The affidavit is also silent about the treatment he underwent and about details of the treatment and how long he was unable to move from his house for jaundice which he allegedly suffered. Therefore, in the absence of any evidence in support of the contention that he had suffered from jaundice, it is difficult to accept the contention of the petitioner.

Time and again, the Apex Court and this Court consistently held that sufficient cause has to be construed liberally without adopting pedantic approach, that does not mean that the Court can condone the delay without any material in support of the contention raised by the petitioner in the petition for condonation of delay.

Learned counsel for the petitioner mainly contended that valuable properties of the parties are involved in the suit and it would affect the rights of the parties. It appears from the order passed by the trial Court that the petitioner filed suit initially for perpetual injunction but during pendency of the suit, the defendant allegedly took forcible possession and hence, later converted the suit for recovery of possession and permanent injunction. No doubt valuable properties are involved in the suit, but the petitioner must be cautious in prosecuting the proceedings. The Apex Court in **P.K.Ramachandran v. State of**

Kerala and another¹; law of limitation may harshly affect a particular party, but it has to be applied with all its rigor when the statute so prescribed and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained.

In **Srinivasa Book Depot, Book Sellers, Nizamabad and others V. Bank of India, Kumargally Branch, Nizamabad²**, this Court held as follows:

“It is true that where public funds are involved, the Court should be liberal in condonation of delay. However, it is too difficult to generalize such a proposition and relieve the institutions from the responsibility and obligation to assign reasons. The question of there being liberal or other approach would arise if only there are certain reasons. If no reasons exist, it is too difficult to condone years of delay based on the ground that the affected party is an institution dealing with public funds. Equally important are the rights conferred upon citizens by law.”

Thus, the law declared by the Apex Court and this Court is clear that unless the cause shown by the petitioner is sufficient cause, the Court cannot condone the delay on the equitable grounds or on a ground that valuable rights of the parties involved in the suit. Therefore, such liberal approach stretching the words ‘the sufficient cause’ to jettison the substantive law of limitation is impermissible under law.

Here, the petitioner though contended that he had suffered from jaundice, no details were mentioned about the date from which he suffered and recovered and other details about the treatment underwent by him and no medical certificate is filed in support of his contention, thereby the order passed by the

¹ AIR 1998 SC 2276

² 2003(1) ALD page 126

appellate Court exercising its discretion that conferred by Section 5 of the Limitation Act and Order 41 of Rule 3(1) of CPC cannot be interfered with, on any of the grounds before this Court during hearing which I referred in the earlier paras. Hence, I found no ground to interfere with the order passed by the Chief Judge, City Civil Court, Hyderabad.

In the result, the Civil Revision petition is dismissed confirming the order, dated 16.03.2017 in I.A.No.5866 of 2016 in A.S.S.R.R.No.25964 of 2010 passed by the Chief Judge, City Civil Court, Hyderabad. No costs.

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

JUNE 29, 2017
ssp

M. SATYANARAYANA MURTHY, J

