

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.6340 of 2016

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908, ('the Code', for brevity) by the unsuccessful petitioners/plaintiffs, is directed against the order, dated 21.09.2016, of the learned Junior Civil Judge, Kodangal, Mahabubnagar District, passed in I.A.No.24 of 2016 in O.S.No.21 of 2007 filed by the petitioners/plaintiffs under Section 5 of the Limitation Act, 1963, read with Section 151 of the Code requesting to condone the delay of 1,142 days in filing a petition under Order IX Rule 4 read with Section 151 of the Code for restoration of the suit, O.S.No.21 of 2007 to file after setting aside the order of dismissal for default, dated 04.12.2012, passed in the said suit.

2. I have heard the submissions of *Sri G.Anandam*, learned counsel for the revision petitioners/plaintiffs, (hereinafter, 'plaintiffs') and of *Sri P.Radhakrishna*, learned counsel for the respondents/defendants, (hereinafter, 'defendants'). I have perused the material record.

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

The plaintiffs brought the suit against the defendants seeking declaration of title and ownership and for perpetual injunction in respect of a plot located at Chakaligeri of Kosgi village more fully described in the schedule annexed to the plaint. When the suit was called on 04.12.2012 before the Court below, there was neither appearance nor representation on behalf of the plaintiffs. Hence, the said suit was dismissed for default. Thereafter, the plaintiffs filed an application under Order IX Rule 4 of the Code seeking restoration of O.S.No.21 of 2007 to file by setting aside the

order, dated 04.12.2012, dismissing the suit for default. As a delay of 1142 days had occasioned in filing the afore-stated interlocutory application, the plaintiffs also filed the subject interlocutory application in I.A.No.24 of 2016 requesting to condone the said delay. On merits and by the order impugned in this Civil Revision Petition, the learned Junior Civil Judge, Kodangal, dismissed the said application and refused to condone the delay *inter alia* holding that there was no representation for the plaintiffs and that they failed to pay the costs imposed by the Court and that the cause shown by them for condonation of the delay is flimsy and that the extraordinary delay of 3 ½ years in seeking restoration of the suit is on account of inaction and negligence on the part of the plaintiffs and that the same is wanton and deliberate and that the causes, namely, amicable settlement and death of the counsel are unbelievable and that therefore, the petition for condonation of delay deserves to be dismissed.

4. Aggrieved of the said order, the plaintiffs are before this Court.

5. Before proceeding further, it is necessary to refer to the pleadings of the parties.

5.1 The case of the plaintiffs, in brief, is as follows: - 'The plaintiffs filed the suit for declaration of title and perpetual injunction in respect of the suit schedule plot located at Chakaligeri, Kosgi village and Mandal. In the month of October 2012, the plaintiffs and the defendants came to an understanding to live amicably and decided to compound the matter. During the relevant time, as their counsel was seriously ill, they have decided to file a petition for compounding the matter after recovery of health of the counsel. Thereafter, their counsel informed them that one of his colleague advocates was looking after the matter by representing him before the Court and advised them to

meet him. Though the plaintiffs met the said counsel, they were unable to get proper advice from the said counsel; and thereafter, they failed to concentrate on the matter due to communication gap between them and the said counsel. As the defendants have themselves agreed orally to be bound by the words of the village and caste elders, they believed their words and kept quiet instead of following up the proceedings. In the circumstances, due to non-appearance of the plaintiffs and non-representation of the matter by their counsel, the suit came to be dismissed for default, on 04.12.2012. However, the plaintiffs are not made aware of the said fact. The defendants having kept quiet, suddenly started denying the title of the plaintiffs over the suit plot and tried to encroach upon it and grab it with the help of false and created documents. Then, the plaintiffs tried to meet their counsel in order to proceed with the prosecution of the suit. However, they came to know that their counsel died on 18.05.2013. The 1st plaintiff is an old person of advanced age and his sons, the plaintiffs 2 and 3, are engaged otherwise and are busy with their respective jobs at their respective places. The plaintiffs were unable to meet the other counsel who was said to be representing them in the suit. Therefore, the plaintiffs engaged another counsel. Hence, the long delay had occasioned. The said delay occasioned not due to wanton and wilful reasons but on account of the afore-stated reasons. The Court has got wide discretion to condone the delay of 1142 days and set aside the order of dismissal for default and to restore the suit to its file. Hence, the petition may be allowed.'

5.2 The case of the defendants, in brief, is as follows:

The material allegations in the affidavit filed in support of the petition of the plaintiffs are all false and invented for the purpose of filing the present petition. The suit was instituted by the plaintiffs during the year 2007.

Along with the suit, a petition for temporary injunction to restrain the defendants from interfering with their possession over the suit plot was also filed. After filing the said suit and the petition, the plaintiffs never reported ready for proceeding with the arguments. Hence, the said petition was closed. Even in the suit, the plaintiffs were never ready and willing to proceed with the matter. After the death of the original counsel, though the subsequent counsel attended the Court, he failed to represent the matter properly. Hence, the suit was dismissed for default, on 04.12.2012. Therefore, the contention of the plaintiffs that they were not aware of the proceedings is untenable. The plaintiffs have deliberately kept quiet without filing the petition for restoration of the suit, within a reasonable time. After lapse of nearly 3 ½ years, the instant petition has been filed requesting to condone the delay. The allegation that there was an amicable settlement and understanding before the caste elders and village elders is all false. The plaintiffs were not diligent in prosecuting their suit. The delay is a long delay of 1142 days. Hence, the petition is liable for dismissal.

6.1 The learned counsel for the plaintiffs, while reiterating the case of the plaintiffs, further submitted as follows:

The refusal to condone delay and the consequential refusal to restore the suit to file occasioned in failure of justice. When a plausible explanation was given, the trial Court ought to have condoned the delay. The trial Court ought to have put the plaintiffs on terms and ought to have condoned the delay to offset the hardship that would be caused to the defendants on account of the delay. The trial Court did not appreciate the facts correctly and the legal position in proper perspective. The trial Court ought to have seen that when the amicable settlement is an oral settlement, it is very difficult to prove the same. Though the delay was satisfactorily explained,

the trial Court failed to exercise the discretion judiciously and had erroneously made observations adverse to the interests of the plaintiffs. The trial Court ought to have seen that the length of delay is not the criterion and that the acceptability of the explanation offered is only relevant and that in a case of this nature, the plaintiffs should be given an opportunity to have their cause decided on merits. Hence, the order of the trial Court is liable to be set aside.

6.2 Per contra, learned counsel for the defendants, while supporting the orders of the trial Court, would contend as follows:

The suit is of the year 2007. There are three plaintiffs. None of them appeared before the trial Court though the matter was adjourned a number of times. Even after the suit was adjourned after imposition of costs, the plaintiffs failed to appear before the court and pay the costs imposed; and, their counsel also failed to represent the matter; and, hence, the trial Court rightly dismissed the suit for default. The plaintiffs are not diligent. They have slept over the matter for nearly 3 ½ years and came with a false explanation that there was an amicable settlement between the parties at the instance of caste and village elders, though there was indeed never any such settlement. The pleadings of the plaintiffs are conspicuously silent in regard to the names of such elders and the alleged date of amicable settlement. The said theory of settlement was invented for the purposes of the application filed by the plaintiffs. The allegation that the plaintiffs' counsel was seriously unwell and therefore, the compromise was not reported to the Court and that the counsel gave assurances as urged by the plaintiffs are all false. The further allegations that another counsel was looking after the matter and that he did not properly advise the plaintiffs and that later the plaintiffs failed to concentrate on the matter due to

communication gap between the said counsel and the plaintiffs' and also on account of the alleged amicable settlement are all false. The said allegations are invented. The suit was dismissed for default on 04.12.2012 and the counsel died on 18.05.2013. Therefore, the counsel was very much alive till the date the suit was dismissed for default. The trial Court rightly observed in its orders that the plaintiffs failed to give reasonable and valid explanation for the long delay of 3 ½ years and that the explanation offered by them is unbelievable and that the inaction and negligence on the part of the plaintiffs is wanton and deliberate and that the law does not favour the plaintiffs, who are not vigilant. The well considered order of the trial Court does not warrant interference. Hence, the revision petition is liable to be dismissed.

7. Learned counsel for the plaintiffs relied upon the decision in *G.Haribabu v. Lagula Krishnaiah Goud and others*¹, wherein, this Court held that as per our jurisprudence, the issue of condonation of delay is a matter of discretion and that the length of delay is not of significance, but what is most vital is the acceptability of the explanation and that when substantial justice and technical consideration are pitted against each other, cause of substantial justice had to be preferred to that of the technicalities, inasmuch as, no party can ever claim a vested right when injustice is being done, all due to the delay in approaching the Court by the other party. However, having regard to the facts and circumstances of the cited case, this Court refused to condone the delay as the negligence is clearly attributable to the petitioner and the request of the petitioner lacked *bona fides*. This decision is relied upon in support of the proposition that the length of the delay is not the criteria, but what is most vital is the acceptability of the explanation. In *State of Nagaland v. Lipok AO*², relied upon by the plaintiffs', the facts disclose that there was a delay on the

¹ 2016 (2) ALD 477

² (2005) 3 Supreme Court Cases 752

part of the State in filing an appeal. The Supreme Court observed in the cited decision that the proof of sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the Court and what counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. Further, on facts, it was held that the delay of 57 days deserves to be condoned.

7.1 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. Veena*³]. 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.'

7.2 In the decision in *Esha Bhattacharjee V/s Managing Director of Raghunathpur Nafar Academy and others*⁴, the Supreme Court having referred 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.

³ AIR 2011 SUPREME COURT 1150

⁴ 2014 (1) ALD 21 (SC)

(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*⁵ 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.”

8. I have given earnest consideration to the facts and the submissions and also the legal position obtaining.

9. The plaintiffs in support of the request for condonation of long delay of 1142 days relied upon two circumstances in their explanation.

Firstly: The plaintiffs contended as follows: In the month of October, 2012, both the parties came to an understanding and that thereafter, they lived amicably and decided to compound the matter; and at the relevant time, their counsel was seriously ill. Though the plaintiffs wanted to file a petition before the trial Court for compounding the matter, they could not do so in view of the serious ill health of their

⁵ 2014 (4) ALD 1 (SC)

counsel. Therefore, the plaintiffs wanted to compound the matter before the trial Court after their counsel's recovery from ill-health.

Secondly: The plaintiffs submit that their counsel also assured that he would look after the matter and that after his recovery, a compromise petition can be filed and that if necessary another counsel can be engaged in his place for prosecuting the matter and that their counsel also informed that his colleague advocate is looking after the matter and is representing the case before the trial Court and advised the plaintiffs to meet the said counsel. But, the said counsel was unable to give proper advise; and thereafter, there was communication gap between the said counsel and the plaintiffs and for that reason, and as the matter is amicably settled before the village and caste elders, they failed to concentrate on the matter; and, later, when the defendants suddenly started denying title and tried to encroach upon and grab the suit plot, with the help of false documents, the plaintiffs came to know about the dismissal of the suit for default on 04.12.2012; and, the death of their counsel on 18.05.2013.

Stating the above facts and circumstances, the plaintiffs sought condonation of the delay. The defence of the defendants is in the nature of denial.

10. Undoubtedly, the delay is a long delay. The defendants also stated in their defence that there was never any amicable settlement and that the story of amicable settlement is invented for the purpose of condonation of delay. Be that as it may. The alleged amicable settlement outside the Court is an oral settlement. According to the plaintiffs, their counsel was seriously unwell and therefore, the matter could not be compromised immediately after the settlement outside the Court. Admittedly, their counsel died on account of ill-health. Learned counsel for the plaintiffs would submit that the settlement took place not on a

single day and therefore, it is pleaded in the affidavit of the plaintiffs that the settlement took place in October 2012. He would also further emphasise that the valuable rights in respect of the immovable property are involved and that if the delay is not condoned and an opportunity is not given to the plaintiffs to have their suit for declaration of title and perpetual injunction decided on merits, the plaintiffs would be put to serious loss and that they would once and for all lose their right, title and interest in respect of the plaint schedule property, which is a valuable immovable property; and, therefore, it is in the interests of justice to condone delay and give one more opportunity to the plaintiffs to have the suit decided on merits, if necessary, by imposing heavy terms. Having regard to the facts and circumstances and the legal position obtaining, this Court is satisfied that the plaintiffs can be given one more opportunity to have their suit decided on merits as the explanation offered is a sufficient cause for condonation of the delay and the length of the delay is no matter and the acceptability of the explanation is the only criterion. In the considered view of this Court, the facts and circumstances of this case afford sufficient grounds to exercise the discretion in favour of the plaintiffs. However, in view of the long delay, this Court is of the considered view that the delay can be condoned by imposition of adequate costs as compensation to offset the delay in disposal of the suit.

11. On the above analysis, this Court finds that sufficient cause was shown for condonation of the long delay and that the Court below is not justified, in the facts and circumstances of the case, in dismissing the application filed by the plaintiffs for condonation of delay. As a sequel, this Court holds that there is acceptable merit in the revision.

12. In the result, the Civil Revision Petition is allowed and the order, dated 21.09.2016, of the learned Junior Civil Judge, Kodangal,

Mahabubnagar District, passed in I.A.No.24 of 2016 in O.S.No.21 of 2007 is set aside and I.A.No.24 of 2016 is accordingly allowed, subject to payment of costs of Rs.10,000/- (Rupees ten thousand only) by the plaintiffs to the defendants through their learned counsel on record in the proceedings before the trial Court within three weeks from the date of receipt of a copy of this order. It is also made clear that in case of refusal on the part of the defendants' counsel to receive the said costs, the plaintiffs are at liberty to deposit the costs to the credit of the suit by seeking necessary permission from the trial Court without reference to any further orders of this Court. On such payment or deposit of costs, as indicated supra, the trial Court shall pass a formal order on the application filed under Order IX Rule 4 read with Section 151 of the Code and restore the suit to file after duly setting aside the order of dismissal for default, dated 04.12.2012, passed in the said suit and shall make an endeavour to dispose of the suit as expeditiously as possible, and preferably within four months from the date of such restoration.

Pending miscellaneous petitions, if any, in this revision shall stand closed.

M. SEETHARAMA MURTI, J

11.04 .2017
BVV/RAR