

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**CIVIL REVISION PETITION No.2697 of 2012****ORDER:**

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order dt. 05.01.2012 in I.A(SR).No.390 of 2009 in CMA No.--/2009 (GR No.1672 of 2009) on the file of Principal District Judge, Visakhapatnam, whereby the application filed under Section 5 of the Limitation Act to condone the delay of 1678 days in filing the appeal was dismissed.

The revision petitioner, who is unsuccessful plaintiff in O.S.No.103 of 2000 before the trial Court, filed a petition under Section 5 of Limitation Act to condone delay of 1678 days in filing the appeal, alleging that she filed suit for specific performance and the said suit was posted for plaintiff's (*ex parte*) evidence i.e., evidence of the petitioner, and while the matter stood thus, she could not appear before the Senior Civil Judge, Gajuwaka, due to her health problem and consequently, on 15.09.2000, the said suit was dismissed for default. Thus, non-appearance of the petitioner before the Court was due to her ill-health, but not otherwise and, therefore, she filed an application under Section 5 of Limitation Act along with application under Order 9 Rule 9 CPC to set aside the dismissal Order dt.15.09.2000 passed by Senior Civil Judge,

Gajuwaka, the petition filed under Section 5 of Limitation Act was dismissed on 14.06.2004 by Senior Civil Judge, Gajuwaka.

When the petitioner was intending to prefer an appeal against the Order dt.14.06.2004 passed by the trial Court within 30 days, the respondent, who is closely related to the petitioner, agreed to register sale deed in her favour after receiving balance sale consideration due to intervention of elders and other well wishers. As the petitioner was under the impression that the respondent will execute registered sale deed after receiving the balance sale consideration, the respondent did not execute the registered sale deed receiving balance sale consideration and on other hand, he filed RCC No. 12 of 2007 against her husband for eviction and the eviction order was passed by the Rent Controller.

She further contended that original agreement of sale was misplaced somewhere in the record room, consequently, she could not prefer any appeal against the Order dismissing the petition filed under Order 9 Rule 9 CPC and she believed the version of the respondent and his wife, but they did not take steps to execute the registered sale deed, receiving the balance sale consideration, therefore, there is inordinate delay of 1678 days in filing the appeal and the said delay is neither willful nor wanton and prayed to condone delay in filing the appeal against the Order dt.14.06.2004 passed by Senior Civil Judge, Gajuwaka.

The respondent filed Counter denying each and every material allegation, while contending that the respondent let out two portions of the house on rent to the husband of the petitioner and the petitioner is no way concerned with the Rent Control proceedings, as her husband is a chronic defaulter in payment of rents, he filed RCC 12 of 2007. As the mediation conducted before the elders was not successful, the husband of the petitioner fabricated the agreement of sale and filed O.S.No.102 of 2000 against the respondent, but on the intervention of the elders, he admitted his guilt and later the respondent filed RCC No.12 of 2007 and it was allowed ordering eviction. In these circumstances, the revision petitioner filed I.A.No.390 of 2009 only to drag on the matter for wrongful gain, the delay was not explained properly and prayed for dismissal of the petition.

During enquiry, none were examined on behalf of petitioner and no documents were marked. Therefore, the Appellate Court, disbelieving the contention of the petitioner, dismissed the petition on 05.01.2012 declining to condone abnormal delay of 1678 days, in preferring appeal against the Order dt.14.06.2004 passed by the Senior Civil Judge, Gajuwaka.

Aggrieved by the Order dt.05.01.2012 in I.A.No.390 of 2009 passed by the Principal District Judge at Visakhapatnam, the present Revision Petition is filed, mainly on the ground that

dismissal of an application to condone delay of 1678 days on the ground of abnormal delay and delay was not explained properly is against the purport of the law laid down by this Court. The appellate Court also failed to consider the close relationship between the parties and the proposed compromise was due to intervention of the elders, which is one of the causes for the delay.

Besides above reason, the petitioner was suffering from ill-health since long time and it is also a ground to condone delay. But, the Principal District Judge, Gajuwaka, did not consider any of the grounds in proper perspective and committed an error in dismissing the petition filed by the petitioner and prayed to set aside the order dt.05.01.2012 passed by the Principal District Judge, Gajuwaka and to condone delay of 1678 days in filing CMA before the District Court.

During hearing, Sri J.Ch.Y.Narsimham, learned counsel for the petitioner, while reiterating the grounds urged in the affidavit, would draw the attention of this Court to the earlier proceeding in R.A.No.01 of 2009 on the file of Senior Civil Judge, Gajuwaka, wherein the Court made certain observations about the proposed compromise for settling the dispute, but this was not placed before appellate Court and thereby the conclusions arrived by the Senior Civil Judge, Gajuwada, in RA No.1 of 2009 are suffice to accept that there was a compromise proposal for settlement of the dispute.

But, the appellate Court erroneously dismissed the petition disbelieving the cause shown by the petitioner therein.

The other contention raised before this Court is that the petitioner was suffering from serious ill-health and thereby she could not appear before the Court and file an appeal, but it was not appreciated properly and thereby the appellate Court dismissed the petition, declining to condone delay of 1678 days in filing the appeal.

The last ground urged before this Court is that due to misplacement of the suit record in the Court, she could not file an appeal against the Order passed by the trial Court. All these grounds are suffice to contend that length of delay is not a ground to condone the delay as the cause shown by the petitioner is satisfactory.

In support of his contentions, he placed reliance on two judgments of the Apex Court and one judgment of this Court and they are as follows:

- 1) *Mrs. Sandhya Rani Sarkar v. Smt Sudha Rani Debi and other*¹;
- 2) *G.P. Srivastava v. R.K. Raizada and others*²;
- 3) *G. Ramegowda, Major etc., v. The Special Land Acquisition Officer, Bangalore and Basavalingappa v. the Special Land Acquisition Officer, Bangalore*³.

¹ AIR 1978 SC 537

² (2000) 3 SCC 54

³ AIR 1998 SC 897(1)

Relying on the law declared, he would contend that while deciding an application under Section 5 of Limitation Act to condone delay, the Court can construe the word “sufficient cause” liberally so as to advance substantial justice or complete justice as the stakes of the parties will suffer severely. But, the trial Court did not consider the affect on rights of the parties, while deciding the application and prayed to set aside the same.

Whereas, Sri V. Mallik, learned counsel for the respondent, supported the impugned Order in all respects, while contending that in the absence of any material produced before the Court to substantiate the grounds urged in the affidavit to condone delay of 1678 days, dismissal of the application by the appellate Court is justified and thereby, the order passed by the Court does not call for any interference by this Court, while exercising jurisdiction under Article 227 of the Constitution of India, since, the jurisdiction of this Court is limited and it is supervisory in nature and such discretion has to be exercised only when the Subordinate Courts or Tribunals exercised their jurisdiction, which is not vested in them or failed to exercise the jurisdiction judiciously. In the absence of any material to show that there is a manifest error in exercising the jurisdiction in the order passed by the appellate Court, the Order cannot be set aside and prayed for dismissal of the petition.

In view of the rival contentions of the parties and considering the material on record, the sole point that arise for consideration is:

Whether the petitioner/plaintiff was prevented by sufficient cause in filing an appeal against the Order dt.14.06.2004 passed in I.A.No. 554 of 2000 on the file of Senior Civil Judge, Gajuwaka, if so, delay of 1678 days in filing Civil Miscellaneous Appeal be condoned ?

POINT: As stated above, the first ground raised in the petition is that the petitioner was suffering from ill-health since long back. The affidavit is totally silent how long she has been suffering from ill-health and when she regained her normal health and nature of the disease, which she suffered at any time, which is the basis for condonation of delay as claimed by the petitioner.

Curiously, sick certificates placed on record along with the revision to explain the cause for her absence on the date of adjournment and for her failure to file an appeal. Normally, whatever the documents filed along with the revision petition cannot be looked into, unless they are part of the record before the Court below. The appellate Court dismissed the petition disbelieving the ill-health pleaded by the petitioner. Even otherwise, the disease, with which the petitioner, suffered is Poly Arthritis for different spells, for which, she placed on clinical laboratory reports to prove her contention. Even according to the said Sick Certificates, allegedly issued by Dr. B.D Naidu, she was

suffering from Poly Arthritis and the Doctor considered that the period of absence from duty from 16.09.2000 to 19.09.2000 is absolutely necessary for restoration of health, and similarly for the period from 20.03.2001 to 27.03.2001, 9.06.2002 to 16.6.2002, 12.09.2003 to 18.09.2003, 10.06.2004 to 17.06.2004. She also placed on record certain lab reports disclosing that she is suffering from neck pain and Hyper Tension and her BP is recorded as 140/80, which is almost normal. Thus, the documents produced before this Court i.e., Sick Certificates and Lab Reports etc., disclose that she was suffering from Poly Arthritis and neck pain only, that too for short spells, she was not an employee but certified that her period of absence is absolutely necessary for restoration of health. Therefore, her failure to file an appeal on account of ill-health cannot be accepted as a ground to condone abnormal delay of 1678 days. Thus, the cause shown by the petitioner in the Sick Certificates issued by B.D. Naidu is false. Therefore, on the ground of sufferance from ill-health for short spells, the abnormal delay cannot be condoned.

The second ground raised before this Court is that the suit record was misplaced in the trial Court. She produced some copies of Letters issued by Principal District Judge, Visakhapatnam, wherein permission was accorded to reconstruct the record in suit O.S.No.103 of 2000 on the file of Senior Civil Judge, Gajuwaka. These Letters, at best, establish that suit record was misplaced and

application for issuance of certified copy i.e., CA No.467 of 2008 could not be complied with. The suit was dismissed for default on 15.09.2000, but, the petitioner conveniently applied for certified copy almost after a lapse of 4 years. Even if the record was misplaced in the Court and the trial Court is permitted to reconstruct the record, nothing prevented the petitioner from filing an appeal before the Court against the Order dt.14.06.2004. Therefore, it is not a just cause for her failure to file an appeal against the Order dt.14.06.2004 before the District Judge. Hence, on this ground also, the Court cannot condone the delay.

The third ground raised before the appellate Court is that there was a compromise proposal, since the respondent agreed to execute registered sale deed in favour of the petitioner, due to intervention of elders, after receiving balance sale consideration. This fact was not substantiated by any material before the Court, except making a bald allegation in the affidavit without disclosing the date of compromise and other details and she did not even enter into the witness box to explain such delay on the ground of compromise proposal, the cause which she raised before the Appellate Court for condonation of delay and she did not even examine any of the elders, who interfered and proposed for settlement of the dispute. In the absence of any material, either oral or documentary evidence, dismissal of the application by the

Appellate Court, declining to condone abnormal delay of 1678 days cannot be faulted.

Learned counsel for the petitioner mainly contended that the Court has to construe the cause shown by the petitioner liberally so as to advance substantial justice or complete justice, while deciding an application filed under Section 5 of the Limitation Act, to condone the delay, because, high stakes of the parties are involved in the proceedings. No doubt, the law is settled that while deciding an application for condonation of delay, the word 'sufficient cause', has to be construed liberally to advance substantial justice or complete justice without adopting any pedantic approach. This legal position is not in dispute, but at the same time, the law of limitation is intended to put an end to the litigation and the Court cannot jettison the substantial law of limitation on the ground of substantial justice or complete justice to condone the delay. The Courts shall not stretch the word sufficient cause, to frustrate the intention of legislature in fixing the period of limitation, but in certain cases where the parties were prevented by a cause, which is beyond their reasonable control, the Court can accept the same as sufficient cause and condone delay.

Learned counsel for the petitioner placed reliance on a judgment of the Apex Court in *Sandhya Rani Sarkar's* case (1 supra), wherein the Apex Court, while deciding an identical issue,

held that it is undoubtedly true that in dealing with the question of condoning the delay under Section 5 of the Limitation Act, the party seeking relief has to satisfy the Court that he had sufficient cause for not preferring the appeal or making the application within the prescribed time and this has always been understood to mean that the explanation has to cover the whole period of delay. However, it is not possible to lay down precisely as to what facts or matters would constitute 'sufficient cause' under Section 5 of Limitation Act. But those words should be liberally construed so as to advance substantial justice, when no negligence or any inaction or want of bona fides is imputable to a party i.e., the delay in filing an appeal should not have been for reasons which indicate the party's negligence in not taking necessary steps which he would have or should have taken. What would be such necessary steps will again depend upon the circumstances of a particular case.

Similarly, in G.P. Srivastava's case (2 supra), the word "sufficient cause" is interpreted while deciding Special Leave Petition filed under Order 9 Rule 13 CPC in para No.7 and concluded that the word 'sufficient cause' means a cause which has prevented from not preferring the appeal or making the application within the prescribed time. When the defendant pleaded that he was prevented from appearing when the suit was called for hearing and unless a sufficient cause is shown for non appearance of the defendant on the date of hearing, the Court has no power to set

aside an *ex parte* decree. The word “sufficient cause” must be liberally construed to enable the Court to do complete justice between the parties, particularly when no negligence or inaction is imputable to the erring party.

Similar view is expressed in *G. Ramegowda’s* case (3 supra), so also in the judgment of this Court in *Maddineni Venkateswarlu and another v. Maddineni Rajamma @ Rajeswari and others*⁴. Therefore, the law declared by the Apex Court and this Court in the judgments referred is that the Courts should liberally construe the cause shown by the petitioner as sufficient cause. Here, in this case, the petitioner assigned three reasons, which I discussed earlier. First reason, which prevented her for filing an appeal, is ill-health. But, curiously the petitioner produced sick certificates issued by Dr. BD Naidu, certifying that she required rest, as if she is an employee. In fact, she is only a house wife. The certificates issued by the Doctor indicate that there is an amount of falsity in the plea. When the petitioner approached the Court with false plea, the Court cannot exercise its discretion, which is conferred on it under Section 5 of the Limitation Act. Moreover, none of the documents produced before the appellate Court substantiate the contentions of the petitioner, more particularly, to prove that she was suffering from ill-health and the

⁴ 2011(5) ALD 721

petitioner did not produce sick certificates before the Appellate Court at least to consider the cause. Therefore, dismissal of the application by the appellate Court on the ground that she failed to establish that she was suffering from ill-health is not an error warranting interference by this Court, while exercising jurisdiction under Article 227 of the Constitution of India.

The second ground, as discussed above, is misplacement of the record in the trial Court. The petitioner is no way concerned with the misplacement of suit record in the trial court when she wanted to file an appeal against the Order dt.14.06.2004 after obtaining certified copies of the documents. Even otherwise, while the suit was dismissed in the year 2004, the petitioner applied for certified copy in the year 2008. Misplacing of the suit record in the trial Court would never prevented the petitioner from filing an application to set aside the Order dt.15.09.2000 or to file an appeal against the Orders dt.14.06.2004. Therefore, it is not a ground to condone the delay.

The third ground raised is the proposed compromise. But, none of the elders, who intervened and settled the matter by compromise, were examined and they did not even file their affidavits in support of their contentions, more particularly, when the respondent denied the very compromise in the counter filed before the appellate Court. Therefore, there is absolutely no

evidence in support of her contention that there was a compromise proposal in between the parties and no details were disclosed, including the date of compromise, date fixed for performance of terms of compromise and who intervened and settled the matter. In the absence of those details, on mere asking to condone the delay, the Court cannot condone such an abnormal delay of 1678 days, though the length of delay is not a matter.

The Apex Court in *Lanka Venkateswarlu (died) By Lrs v. State of AP*⁵, expressed its displeasure in para No.26 of the Judgment for condoning delay on the concept of liberal approach, justice oriented approach and substantial approach, and held as follows:

“We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay”.

Therefore, to do complete justice or substantial justice etc., the Court cannot condone delay, having found that there is no justifiable cause, which prevented the petitioner from filing an application.

⁵ AIR 2011 SC 1199

The word “sufficient cause” is not defined in the Act or anywhere, but sufficient cause can be said to be a cause, which is beyond the reasonable control. But here, the petitioner suffered from ill-health for short spells. Even according to the medical certificates produced before this Court and other two grounds raised i.e, proposal for compromise and misplacement of record, would not form the basis to exercise discretion to condone abnormal delay.

In *P.K. Ramachandran v. State of Kerala and another*⁶ , the Apex Court held as follows:

“Law of limitation may harshly affect a particular party, but it has to be applied with all its rigor when the statute so prescribe 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 for condoning the delay cannot be sustained”.

Similar view is expressed by this Court in *Srinivas Book Depot, Book Sellers, Nizamabad and others*⁷. Therefore, unless the petitioner proves that she was prevented by a sufficient cause i.e., cause which is beyond her reasonable control, the Court cannot condone such an abnormal delay.

In the present case, the appellate Court declined to condone delay as the petitioner failed to substantiate any of the grounds

⁶ AIR 1998 SC 2276

⁷ 2003(1)ALD 126

which prevented her from filing an appeal. In such a case, it is difficult to hold that the appellate Court did not exercise its discretion properly to condone abnormal delay of 1678 days.

Stakes involved in the suit or any proceedings are irrelevant when the length of delay is not relevant. When the stakes are high, the degree of care in prosecution of proceedings is always higher and the parties must be too cautious than in normal course and when the petitioner was negligent in prosecuting the proceedings at every stage, both before the trial Court and appellate Court, she is disentitled to claim a discretionary relief under Section 5 of the Limitation Act.

In view of my foregoing discussion, I find no ground to interfere with the findings recorded by the appellate Court in I.A.No.390 of 2009 by exercising jurisdiction under Article 227 of the Constitution of India, which is limited, and even if the Courts passed an erroneous Order within its limit, this Court cannot exercise its jurisdiction under Article 227 of the Constitution of India, in view of the judgment of Apex Court State (N.C.T. Of Delhi) vs Navjot Sandhu@ Afsan Guru⁸, since the power under Article 227 of the Constitution of India can be exercised by this Court only to keep the Subordinate Courts or Tribunals within their

⁸ 2003 (6) SCC 641

jurisdictional limits and when the Courts acted within their jurisdictional limits, this Court cannot exercise such power under Article 227 of the Constitution of India and reverse the Order passed by the Courts exercising judicial discretion. Therefore, I find no ground to interfere with the Order under challenge. Consequently, this Civil Revision Petition is to be dismissed.

In the result, this Civil Revision Petition is dismissed without costs.

As a sequel to it, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Date: 23.06.2017

eha

M. SATYANARAYANA MURTHY, J

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



CIVIL REVISION PETITION No.2697 of 2012

Dt. 23.06.2017

Eha