

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOS.
5371, 5487, 5507 AND 5564 OF 2017

COMMON ORDER

V.Ram Mohan, the respondent in these civil revision petitions, filed O.S.No.1556 of 2014 seeking specific performance of the agreement of sale dated 11.08.2012; O.S.No.1555 of 2014 seeking specific performance of the agreement of sale dated 11.08.2012; O.S.No.1441 of 2014 seeking specific performance of the agreement of sale dated 11.08.2012; and O.S.No.1554 of 2014 seeking specific performance of the agreement of sale dated 08.03.2014. All these suits were filed before the learned XVI Additional District and Sessions Judge, Ranga Reddy District at Malkajgiri. K.Jagadeswar Setty was the sole defendant in O.S.Nos.1556 of 2014, 1555 of 2014 and 1441 of 2014, while his son, K.Shashank, was the sole defendant in O.S.No.1554 of 2014. O.S.Nos.1556 of 2014, 1555 of 2014 and 1554 of 2014 were decreed *ex parte* on 30.07.2015, while O.S.No.1441 of 2014 was decreed *ex parte* on 07.09.2015. I.A.No.126 of 2017 in O.S.No.1556 of 2014; I.A.No.125 of 2017 in O.S.No.1555 of 2014; and I.A.No.122 of 2017 in O.S.No.1441 of 2014 were filed by K.Jagadeswar Setty, the sole defendant in these suits, under Section 5 of the Limitation Act, 1963 (for brevity, 'the Act of 1963') seeking condonation of the delay in filing petitions under Order 9 Rule 13 CPC to set aside the *ex parte* decrees passed in the suits. I.A.No.124 of 2017 in O.S.No.1554 of 2014 was filed by K.Shashank, the sole defendant in the suit, under Section 5 of the Act of 1963 seeking condonation of the delay in filing a petition under Order 9 Rule 13 CPC to set aside the *ex parte* decree passed in the suit. The delay in this regard in so far as O.S.Nos.1556 of 2014, 1555 of 2014 and 1554 of 2014 are concerned was 326 days, while it was 264 days in O.S.No.1441 of 2014. By separate orders dated 09.08.2017, the trial Court dismissed all the I.As. Aggrieved thereby, K.Jagadeswar Setty and K.Shashank, the defendants in these suits, are before this Court by way of these revision petitions.

C.R.P.No.5371 of 2017 pertains to the dismissal of I.A.No.126 of 2017 in O.S.No.1556 of 2014; C.R.P.No.5487 of 2017 relates to the dismissal of I.A.No.125 of 2017 in O.S.No.1555 of 2014; C.R.P.No.5507 of 2017 arises out of the dismissal of I.A.No.122 of 2017 in O.S.No.1441 of 2014; and C.R.P.No.5564 of 2017 pertains to the dismissal of I.A.No.124 of 2017 in

O.S.No.1554 of 2014. All the civil revision petitions were filed under Section 115 CPC.

Heard Sri Bankatlal Mandhani, learned counsel for the petitioners in the CRPs., and Sri R.Raghunandan, learned senior counsel representing Sri T.Bala Mohan Reddy, learned counsel for the respondent in the revisions.

Sri Bankatlal Mandhani, learned counsel, would state that K.Jagadeswar Setty, the petitioner in C.R.P.Nos.5371, 5487 and 5507 of 2017, was imprisoned after service of summons in the suits and was therefore unable to take steps either to contest the cases or to seek setting aside of the *ex parte* decrees passed therein. In so far as K.Shashank, the petitioner in C.R.P.No.5564 of 2017, is concerned, learned counsel would submit that as his father was in jail, he was unable to attend the Court and contest the suit and could not take necessary steps as he and his mother were put to mental agony due to the incarceration of his father and were roaming around the Courts so as to secure his release. Sri Bankatlal Mandhani, learned counsel, would submit that his clients denied the very execution of the suit agreements of sale and that if they are afforded an opportunity to contest the suits, they would be able to demonstrate the same. Learned counsel would therefore submit that the delay deserves to be condoned in all the cases.

Sri R.Raghunandan, learned senior counsel, would contest these claims and point out that the trial Court recorded in the orders under revisions that K.Jagadeswar Setty was set *ex parte* after service of summons on 21.04.2015 in O.S.Nos.1556, 1555 and 1441 of 2014, while K.Shashank was also set *ex parte* in O.S.No.1554 of 2014 on 21.04.2015. Thereafter, the plaintiff was examined in all these suits and they were posted for judgment. On that day, *ex parte* decrees were passed. Learned senior counsel would further state that K.Jagadeswar Setty was in jail from 27.07.2015 to 31.08.2016 and he filed the petitions to set aside the *ex parte* decrees in the suits on 04.08.2016, while he was still in prison. However, the applications to condone the delay in the presentation of the set aside *ex parte* decree petitions were filed in February, 2017. Learned senior counsel would therefore assert that when K.Jagadeswar Setty could file the set aside petitions while still in prison, he cannot claim incarceration as an excuse for condonation of the delay.

Perusal of the orders under revision in so far as they pertain to K.Jagadeswar Setty reflects that the Order 9 Rule 13 CPC petitions were filed

by him on 04.08.2016, while in prison, without seeking condonation of the delay in filing such petitions. These applications were attested by the Jailer. It was only at the stage of hearing of those petitions that the subject petitions under Section 5 of the Act of 1963 came to be filed. The trial Court also took note of the fact that the respondent herein, being the plaintiff in the suits, filed execution proceedings seeking execution of the *ex parte* decrees. Having considered case law on the subject, the trial Court opined that K.Jagadeswar Setty failed to explain the delay from the date of filing of the set aside petitions under Order 9 Rule 13 CPC till the date of filing of the condone delay petitions and held that there was no proper and satisfactory explanation for condoning the delay. Further, the trial Court found no merit in his claim that as he was in jail he failed to appear before the Court. The same was not found to be a satisfactory and reasonable explanation for his failure in the light of the admitted fact that he took no steps with regard to the orders dated 21.04.2015 setting him *ex parte* in the suits though he was subjected to incarceration only in July, 2015. The trial Court applied the same logic in the case relating to K.Shashank.

The reasoning of the trial Court that the petitioners not only had to explain the delay on their part up to the date of filing of the petition under Order 9 Rule 13 CPC but beyond that also, up to the date of filing of the condone delay petition, is erroneous in law. In RAMLAL V/ s. REWA COALFIELD LTD.¹, the Supreme Court held to the effect that in all cases filing under Section 5 of the Act of 1963, what the party has to show is why he did not file the proceeding on the last day of the limitation prescribed and that may mean that the party would have to show sufficient cause not only for not filing the proceeding on the last day but to explain the delay thereafter day by day. In other words, *per* the Supreme Court, in showing sufficient cause for condoning the delay, the party may be called upon to explain the whole of the delay covered by the period between the last day prescribed for filing the proceeding and the day on which the proceeding is filed. Therefore, once the application under Order 9 Rule 13 CPC was filed, the delay in its filing came to a standstill and the period beyond the filing of such application up to the date of filing of the condone delay petition would not be taken into consideration to compute the delay in filing of the petition under Order 9 Rule 13 CPC.

¹ AIR 1962 SC 361

That being said, the further question that remains to be considered is whether K.Jagadeswar Setty and K.Shashank made out sufficient cause for condoning the delay in each of the cases.

Sri Bankatlal Mandhani, learned counsel, would rely upon S.GANESHARAJU (DEAD) THROUGH LRS. V/ s. NARASAMMA (DEAD) THROUGH LRS.² and GMC ENGINEERING INDUSTRIES V/ s. ISSA GREEN POWER SOLUTION³ in support of his contention that the expression 'sufficient cause' in Section 5 of the Act of 1963 has to be given a liberal construction so as to advance substantial justice and that unless the respondents are able to show *malafides* in not approaching the Court within the period of limitation, generally as a normal rule, delay should be condoned. However, it may be noted that in GMC ENGINEERING INDUSTRIES³, the Supreme Court observed that the discretion to condone the delay should be exercised like any other judicial discretion, with vigilance and circumspection and not in any arbitrary, vague or fanciful manner. It was further observed that the true test is to see whether the applicant had acted with due diligence and if there is no negligence, inaction or want of *bonafides* on the part of the applicant, the expression 'sufficient cause' should receive liberal construction so as to advance substantial justice and the delay should be condoned.

Per contra, Sri R.Raghunandan, learned senior counsel, would point out that the Supreme Court, in BASAWARAJ V/ s. SPECIAL LAND ACQUISITION OFFICER⁴, observed that the expression 'sufficient cause' should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of *bonafides* cannot be imputed to the party concerned. The Supreme Court held that it is a well settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Court has no power to extend the period of limitation on equitable grounds.

Though 'sufficient cause' in Section 5 of the Act of 1963 should be construed liberally without adopting a pedantic approach, it cannot be stretched to frustrate the very intention of the legislature in specifying the

² (2013) 11 SCC 341

³ (2015) 15 SCC 659

⁴ (2013) 14 SCC 81

period of limitation. (See ALLALA BHAGAVANTH RAO V/ s. GARVANDULA VI JAYALAXMI⁵).

In MUNICIPAL CORPORATION, GWALIOR V/ s. RAMCHARAN (DEAD) BY LRS.⁶, the Supreme Court observed that in a case involving valuable rights of the parties in an immovable property, the Court ought to take a liberal and not a rigid and too technical view on the issue of condonation of delay.

In P.BUCHANNA V/ s. B.YADAGIRI⁷, this Court took the view that when valuable immovable property rights are involved, the Court should ordinarily afford a hearing to both parties rather than take a decision upon hearing just one side.

Each case would have to turn upon its own facts.

Indisputably, there appears to be some amount of carelessness and negligence on the part of K.Jagadeswar Setty and his son, K.Shashank, in taking timely steps, be it in contesting the suit or in seeking the setting aside of the *ex parte* decrees. However, the fact remains that the delay on their part is adequately explained at least to some extent as K.Jagadeswar Setty was admittedly in prison from July, 2015 to August, 2016. This would have invariably taken a toll on the family and also their day to day affairs. Further, the delay in none of the cases is in excess of one year. Their negligence and lack of diligence notwithstanding, the same, at best, would be liable to be penalized with imposition of costs but cannot be held to be serious enough to visit them with the consequences of the *ex parte* decrees passed against them, whereby they would have to part with their immovable properties. It is their claim that the suit agreements of sale are fabricated. Unless they are given an opportunity to plead and demonstrate to this effect, their valuable rights would be prejudiced on the basis of technicalities. Be it noted that procedure is considered the handmaid and not the mistress of justice. (See SUSHIL KUMAR SEN V/ s. STATE OF BIHAR⁸).

The civil revision petitions are accordingly allowed. The orders under revision are set aside and the delay in these cases is condoned upon payment of costs of Rs.10,000/- (Rupees ten thousand only) in each of the cases to the respondent/plaintiff within two weeks from today.

⁵ 2015 (5) ALD 598

⁶ (2002) 4 SCC 458

⁷ 2017 (3) ALD 583

⁸ (1975) 1 SCC 774

Pending miscellaneous petitions in all the cases shall stand closed.
There shall be no order as to costs.

SANJAY KUMAR, J

24th NOVEMBER, 2017

Sv

