

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 2534 of 2017

ORDER:

This Civil Revision Petition under Section 115 C.P.C is filed challenging the order dated 28.04.2017 passed by the I Additional Chief Judge, City Civil Court, Secunderabad, in I.A.No.553 of 2017 in A.S.SR.No.2748 of 2017.

The facts, in brief, are that the petitioner herein filed O.S.No.674 of 2015 on the file of the XI Junior Civil Judge, City Civil Court, Secunderabad, for recovery of possession and mesne profits, against the respondent herein. Along with the said suit, the petitioner herein filed I.A.No.316 of 2016 seeking arrears of rent and electricity charges and the same was allowed. The respondent herein filed I.A.Nos.45 and 46 of 2017 for enlargement of time to pay arrears of rent etc., and reopening of the said I.A. The trial Court allowed the said I.As. on 21.02.2017 and posted I.A.No.316 of 2016 to 28.02.2017. On 09.03.2017, the trial Court allowed I.A.No.316 of 2016 and decreed the suit.

Aggrieved by the judgment and decree dated 09.03.2017, the respondent herein filed an appeal vide A.S.SR.No.2748 of 2017 before the I Additional Chief Judge, City Civil Court, Secunderabad. As there was a delay of 15 days in filing the appeal, he filed I.A.No.553 of 2017 under Section 5 of the Limitation Act to condone the delay. The only ground urged by him before the lower appellate Court was that the date of hearing of I.A. was inadvertently noted by the junior counsel, who attended the trial Court, as 28.03.2017 instead of 28.02.2017. Thereafter, the respondent herein could not appear before the trial Court on four consecutive adjournments and on 09.03.2017, the trial Court decreed the

suit. The junior counsel attended the trial Court on 28.03.2017 and came to know about passing of the decree on 09.03.2017 and also allowing of I.A.No.316 of 2016, whereby, the respondent herein was directed to deposit Rs.47,200/- on or before 07.03.2017. Since the respondent herein had no information about passing of the order on account of his failure to attend the trial Court and wrong noting of the date of adjournment by the junior counsel, he was prevented by sufficient cause that is a cause which is beyond his control and therefore, he prayed for condonation of delay.

The petitioner herein filed counter opposing the petition on the ground that when the respondent's defence was struck off for non-compliance of the order in I.A.No.316 of 2016, the said order became final and remained unchallenged. Further, the respondent herein had knowledge about passing of the decree as early as on 28.03.2017, but did not take steps to set aside the said order within the time and that each and every day's delay was not explained. The lower appellate Court, by the order under revision, condoned the delay by exercising its discretion. Aggrieved by the same, the petitioner filed this revision.

At the stage of admission, Sri K. Mohan, learned counsel for the petitioner, contended that the respondent has also filed an application under Order IX Rule 13 C.P.C to set aside the *ex parte* decree and thus, prosecution of two applications simultaneously cannot be permitted. Apart from that, the delay was not explained properly. Therefore, condonation of delay by the lower appellate Court was erroneous and sought to set aside the impugned order.

The reason explained by the respondent for his absence before the trial Court was that the junior counsel wrongly noted the date of adjournment and thereby, he could not appear before the trial Court on

the date of hearing. The junior counsel, who was appearing for him, attended the trial Court on 28.03.2017 and came to know about the passing of the decree on 09.03.2017. Immediately, the respondent obtained a copy of the judgment and decree and filed an appeal. As there was a delay of 15 days in filing the appeal, he filed the above Interlocutory Application to condone the same. The lower appellate Court exercised its discretion and allowed the I.A by the order under appeal.

In fact, the length of the delay is not the criteria and the cause shown to condone the delay is sufficient or not is the criteria to decide an application under Section 5 of the Limitation Act. The cause shown by the respondent is that due to negligent noting of the date of adjournment by the junior counsel, he could not appear before the trial Court on the date of hearing. Therefore, for the negligence of an Advocate, the party shall not be put to any inconvenience. Hence, the cause shown by the respondent is sufficient cause which prevented him from appearing before the trial Court.

According to the allegations made in the affidavit, though the respondent came to know about the passing of the decree on 28.03.2017, he presented the application on 24.04.2017 i.e., after 26 days. But, he filed the application within 30 days from the date of knowledge about the passing of the decree and it is not a ground to decline the condonation of delay.

The power under Section 5 of the Limitation Act is discretionary in nature. It is true that the term 'sufficient cause' occurring in Section 5 of the Limitation Act will have to be construed liberally and a pedantic approach shall not be adopted by a Court of Law. To put it differently, a meaningful and purposeful approach will have to be adopted by a Court of

Law while dealing with an application under Section 5 of the Limitation Act.

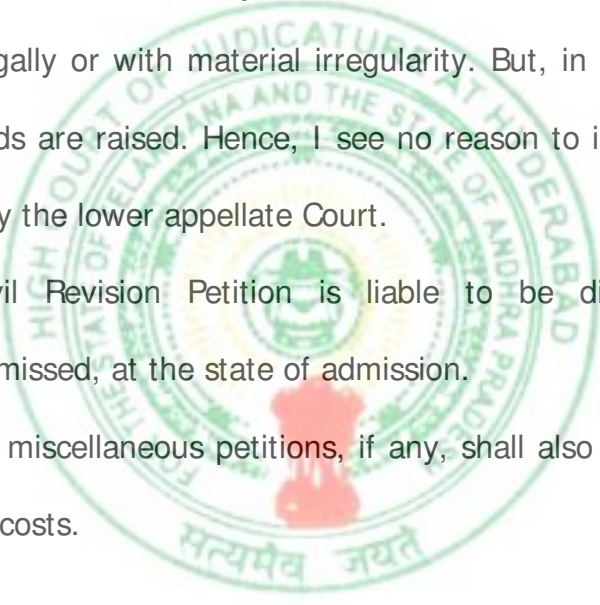
In the present case, the reason explained by the respondent was sufficient cause irrespective of the length of the delay. Therefore, the lower appellate Court rightly exercised its discretion and condoned the delay.

Further, under Section 115 C.P.C, this Court may exercise jurisdiction in three circumstances viz., if the subordinate Court appears to have exercised a jurisdiction not vested in it by law, or failed to exercise a jurisdiction not vested in it by law, or acted in the exercise of the jurisdiction illegally or with material irregularity. But, in the instant case, no such grounds are raised. Hence, I see no reason to interfere with the order passed by the lower appellate Court.

The Civil Revision Petition is liable to be dismissed and is accordingly dismissed, at the state of admission.

Pending miscellaneous petitions, if any, shall also stand dismissed.
No order as to costs.

Date: 15.06.2017
va


M. SATYANARAYANA MURTHY, J