

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3319 of 2017

ORDER:

1) Heard Sri N.Siva Reddy, learned counsel appearing for the petitioners and Sri K.Srinivasa Reddy, learned counsel appearing for respondent No.1. It is to be noted here that earlier the matter was heard and was being adjourned, meanwhile Sri K.Srinivasa Reddy filed his 'vakalath' on behalf of respondent No.1 as such the matter was heard again.

2) Aggrieved by the order, dated 13.06.2017, passed in I.A.No.62 of 2014 in O.S.No.49 of 2006 on the file of the IV Additional District Judge, Tirupati, wherein an application filed under Section 5 of Limitation Act, to condone the delay of 999 days in filing an application to set aside the exparte decree was dismissed, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

3) The facts in issue are as under:

Respondent No.1 herein, filed O.S.No.49 of 2006 seeking damages to a tune of Rs.11,00,000/- with interest at 12%p.a. on account of death of one G.Venugopal, who died on coming into contact with a live wire of defendant Nos.2 and 3 and got electrocuted in the college of defendant No.1. The said suit was decreed exparte on 26.04.2011, directing the petitioners, who are defendant Nos.2 and 3 in the said suit, to pay Rs.6,87,000/- with

proportionate costs and subsequent interest at 6% p.a. from the date of suit ie. 17.07.2006 till the date of realisation. As the petitioners failed to deposit the said amount, respondent No.1 herein filed O.E.P.No.2 of 2014. On receipt of the notices in the said O.E.P., the petitioners filed the present application, under Section 5 of Limitation Act to condone the delay of 999 days in filing the petition to set aside the exparte decree, dated 26.04.2011.

4) The averments in the affidavit filed in support of the petition would show that though the summons were served in the office of the petitioners on 27.09.2006, but the concerned clerk failed to bring it to the notice of the officials, as such they could not appear before the trial Court. Seeing their absence, the trial Court made them exparte on 16.10.2006.

5) Respondent No.1/ Plaintiff filed counter contending that the petitioners were not bonafide in filing the application after three years. It is also stated that as the petitioners failed to explain the delay in filing the said application, seeks dismissal of the revision.

6) After considering the rival submissions made, the trial Court dismissed the said application. Challenging the same, the present Civil Revision Petition came to be filed.

7) Learned counsel for the petitioner would submit that an amount of Rs.1.00 lakh has already been paid by the petitioners on filing of the E.P. by the respondent No.1 herein. He further stated that the petitioners will pay substantial amount, as a condition for condoning the delay.

8) The offer of the petitioner cannot be accepted in view of the judgment of the Apex Court in *GMG Engineering Industries and others v. Issa Green Power Solution and others*¹ wherein the Apex Court held that “ while the trial Court has exercised the discretion to condone the delay in filing the application to set aside the exparte decrees, should not have imposed onerous condition of depositing the amount” .

9) In the instant case, the delay was deliberate inaction on the part of the petitioners-government agency, who failed to respond even after receiving summons from the Court. Except stating that the concerned clerk did not bring the same to the notice of the Superintending Engineer, with regard to receipt of suit summons, the petitioners did not explain the day today delay or even month to month delay, in filing the application to set aside the exparte order. .

10) In similar circumstances, a Division Bench of this Court in *Government of Andhra Pradesh rep. by District Collector, Chittoor and another v. Kandriga Subba Reddy and others*² held as under:

“It is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/ years due to considerable degree of procedural red-

¹ (2015) 15 SCC 659

² (2014) 1 ALT 631 (D.B.)

tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an except and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

11) Apart from that, in *Balwanth Singh v. Jagdish Singh*³ the Apex Court observed as under:

"25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation." "26. The law of limitation is a substantive law and has definite consequences on the right and obligation of party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

12) In *Lanka Venkateswarlu (D) by L.R.s, v. state of A.P. and others*⁴ the Apex Court observed as under:

³ (2010) 8 SCC 685

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26. 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. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under [Section 5](#) of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections can not and should not form the basis of exercising discretionary powers. “

13) From the judgments referred to above, it is clear that the delay cannot be condoned as a matter of course and that a reasonable and sufficient cause has to be shown, as to why the delay has occurred. In the present case, there is absolutely no explanation with regard to delay, which is nearly 1000 days. Moreover, the record itself shows tampering of documents ie. incorporating the date in the affidavit filed in support of I.A. The same was observed by the trial Court in his order and also suggested

action be taken against all concerned. It would be useful to extract the relevant para which is as under:

“Today, this Court while reading the record shocked to notice that the affidavit of third respondent which did not contain date, month and year of attestation earlier, containing the date of affidavit as 20.02.2014. It seems, the date, month and year as 20.02.2014 has been inserted by the side of affirmation under the bottom of affidavit of third defendant. It is nothing but tampering of court record and also affidavit filed by third defendant. But who did the said tampering is need to be enquired and decided by calling explanation from the concerned clerk, who is custodian of the record.”

14) In view of the above circumstances, I see no merit to interfere with the impugned order.

15) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

22.09.2017
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