

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.2866 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful respondents/defendants is directed against the orders, dated 23.01.2016, of the learned Senior Civil Judge, Sattenapalli, passed in IA.No.1172 of 2015 in OS.No.654 of 2013 filed by the plaintiff under Section 5 of the Limitation Act, 1963, requesting to condone the delay of 269 days in filing the application for setting aside the order of dismissal for default, dated 20.06.2014, made in the suit.

2. I have heard the submissions of Sri G.L. Narasimha Rao, learned counsel appearing for the revision petitioners/defendants, ('the defendants', for brevity), and of Sri K. Suresh Reddy, learned counsel for the respondent/plaintiff ('the plaintiff', for brevity). 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 sole plaintiff brought the afore-said suit against the defendants for recovery of money. The defendants are resisting the suit. For non appearance of the plaintiff and his failure to adduce evidence, the suit was dismissed for default, on 20.06.2014. The plaintiff filed an application under Order IX Rule 9 read with Section 151 of the Code of Civil Procedure, 1908, requesting to set aside the said order of dismissal for default. However, as a delay of 269 days had occasioned in filing the said petition, the subject application is filed for condonation of the said delay. The said application was resisted by the defendants. On merits and by the order impugned, the trial Court allowed the petition of the plaintiff by imposing costs of Rs.1,000/- to be paid to the

defendants. Aggrieved of the said orders, the defendants are before this Court.

4. The case of the plaintiff in support of the request for condonation of delay, in brief, is as follows: - 'During the course of trial, when the matter was posted to 20.06.2014, the plaintiff failed to adduce evidence as he fell seriously ill. For the said reason, he could not contact his counsel. Therefore, for the absence of the plaintiff and his counsel, on 20.06.2014, the suit was dismissed for default. The plaintiff could not attend the Court on the said date due to his ill health and due to his relative's death. He suffered from Typhoid and nervous weakness. As such he could not also meet his counsel. There is no wilful negligence on his part. He has got a strong case in the suit. Hence, the order of dismissal for default, dated 20.06.2014, made in the suit may be set aside by condoning the delay in filing the application seeking to set aside the order, dated 20.06.2014.

5. The case of the defendants, in brief, is this: - 'The material averments in the affidavit filed in support of the petition are false. The allegation that the plaintiff suffered serious ill health and for that reason he could not contact his counsel and appear before the Court below is false. The plaintiff in-fact attended the Court, on 20.06.2014, at the time of call work and reported ready; but, later he intentionally avoided entering into the witness box. The reason for the long delay in seeking to set aside the order of dismissal made in the suit is not properly explained. No medical record like prescriptions is filed to show that he suffered illness as stated in the petition. The plaintiff, who was one of the accused in C.C.No.177 of 2012 pending on the file of I Additional Junior Civil Judge, Sattenapalli, attended the said case for five times between 26.06.2014 and 24.04.2015. He also attended before the said Court in C.C.No.265 of 2012 for nine times between 14.07.2014 and 04.05.2015. Apart from appearing in the said cases, he also attended for

police enquiry before Town police in another case, on 08.01.2015. His vakalat was filed, on 19.01.2015, in W.P.No.32715 of 2014. Similarly, the plaintiff attended various proceedings in several Courts during the relevant time covering the period of delay. But, surprisingly, he did not file a petition to restore the suit within the time allowed under law. The subject application is filed only to drag on the proceeding. The plaintiff has no merit in the suit. The present application is filed only to cause mental agony to the defendants. The defendants reserve their right to claim damages for unnecessary prosecution. There is no merit in the petition. The petition is liable to be dismissed.'

6. Learned counsel for the defendants while reiterating the pleaded case of the defendants further submitted as follows:

The trial Court allowed the petition on the ground that liberal view has to be taken in considering the petitions filed for condonation of delay. The trial Court erred in making observations with regard to liberal approach as such observations were made while dealing with cases in which there was explanation for the day to day delay; but, in the instant case, the reason stated for the delay is false as during the relevant period during which the plaintiff was said to have been unwell, he attended in other proceedings pending before various other Courts. The said facts are brought to the notice of the trial Court by a memo. Thus, a false explanation was offered in support of the request for condonation of delay. The petition is filed in a casual manner without offering any explanation much less valid explanation for the long delay. Therefore, the trial Court is not justified in condoning the delay. A mere bald mention that the plaintiff suffered Typhoid is no valid explanation for the long delay of more than 250 days; no medical certificate is filed in support of the said alleged contention. The said reason is false and is a ruse to get over the laches and the long delay that had occasioned due to the

deliberate and wilful conduct of the plaintiff. The order of the trial Court may be set aside.

6.1 Learned counsel for the defendants also brought to the notice of this Court that the brother of the plaintiff by name Devarasetty Rama Krishna filed another suit against the very same defendants and that the said suit was also dismissed for default on the same day and that the plaintiff in the said suit also filed similar petitions pleading ill health on account of Typhoid as well as death of a relative as grounds for non attendance before the trial Court on the date the suit was dismissed for default and that the defendants filed another connected CRP.No.2926 of 2016 and that the said CRP is also coming along with this CRP for hearing and disposal. He would further submit that the defendants filed the true copy of the docket orders in CC.No.265 of 2012 on the file of the Court of the learned I Additional Junior Civil Judge, Sattenapalli, to show that the plaintiff herein, who is A1 in the said CC, attended before the said Court on 14.07.2014, 01.09.2014 and 02.03.2015.

7. Learned counsel for the plaintiff supported the orders of the trial Court.

8. It is well settled principle that expression 'sufficient cause' under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice and what constitutes sufficient cause always depends on the facts and circumstances of a particular case. Hence, the application need not be rejected merely on the ground of inordinate delay, but the test shall be whether sufficient cause is made out for the delay.

8.1 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. Veena¹]. 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

¹ AIR 2011 SUPREME COURT 1150

exercise discretion for the reason that whenever the court exercises discretion it has to be exercised judiciously.'

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

10. As rightly urged by the learned counsel for the defendants, the delay is a long delay of 269 days and except stating that the plaintiff suffered from Typhoid and could not contact his counsel and that for his non appearance the suit was dismissed for default, no details of the period of ill health are pleaded and no medical certificate is also filed. No explanation was offered for the delay in seeking to set aside the order of dismissal for default passed in the suit. A plain perusal of the affidavit filed in support of the application for condonation of delay reflects that the application is filed in a casual manner without giving any valid explanation, with necessary details, for the long delay. When the delay is a long delay of more than 250 days, such delay ought to have been explained by offering valid explanation, with all necessary details and not in a casual manner. The laconic pleading lays bare that the delay is wilful and deliberate and obviously, there is no explanation, much less valid explanation, for the long delay. As per settled law, 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 a bald statement in an application seeking condonation of delay and fails to substantiate the same, the Court ought to refuse to condone such delay or inordinate delay. On a careful consideration it appears that the averments made in the affidavit filed in support of the petition do not constitute a sufficient cause for condonation of the delay. Further, the long unexplained delay cannot be condoned as the averments, which are casual and which are unsubstantiated do not constitute a sufficient cause for condonation of long delay and as it appears from the facts borne out by the record that there is no

justification for the long delay. Be that as it may. The suit was admittedly dismissed for default, on 20.06.2014. The application for restoration was filed after a long delay of 269 days merely citing ill health as a ground. The specific case of the defendants is that during the relevant period between the date of dismissal of the suit and till the application for condonation of delay is filed, the plaintiff who is an accused in a calendar case appeared before the Court of the learned Magistrate and that, therefore, the explanation for delay is a false and invented explanation. No reply affidavit is filed by the plaintiff denying the case pleaded by the defendants. Before this Court the fact that the plaintiff attended before the learned Magistrate on the dates mentioned by the defendants is not disputed. 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. Hence, this court cannot condone the delay in a case where the Court concludes that the explanation offered for the delay is incorrect and when there is no justification for the delay. Further, in the facts and circumstances of the case, the delay cannot be condoned as the plaintiff, who is seeking condonation of delay, had failed to demonstrate that the cause that had prevented him from pursuing the remedy had sprouted before the expiry of limitation and continued and prevented them from taking necessary steps till the date the application is filed and had further made an incorrect statement in support of his request for condonation of delay in seeking to set aside the order of dismissal made in the suit.

11. In the decision in Esha Bhattacharjee V/s Managing Director of Raghunathpur Nafar Academy and others², 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:

² 2014 (1) ALD 21 (SC)

(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.

(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*³ 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.”

The ratios in the cited cases squarely apply to the facts of the instant case.

³ 2014 (4) ALD 1 (SC)

12. On the above analysis this Court finds that the Court below is not justified, in the facts and circumstances of the case, in allowing the application filed by the plaintiff for condonation of delay and that the revision petition of the defendants deserves to be allowed.

13. In the result, the Civil Revision Petition is allowed.

Pending miscellaneous petitions, if any, in this revision shall stand dismissed. There shall be no order as to costs.

M.Seetharama Murti, J

01.11.2017

Vjl

