

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5407 of 2016

ORDER:

1) The present Civil Revision Petition is filed under Section 115 of C.P.C. aggrieved by an order, dated 16.09.2016 passed in I.A. No.570 of 2012 in O.S.No.170 of 2010 on the file of the Additional Senior Civil Judge, Tirupati, Chittoor District, wherein an application filed under Section 5 of Limitation Act to condone the delay of 119 days in filing a petition under Order 9, Rule 9 of C.P.C. to set aside the *ex parte* order passed by the Court below rejecting the suit for default, was dismissed.

2) The averments in the affidavit filed in support of the I.A.No.570 of 2012 would show that the petitioner-plaintiff filed a suit for permanent injunction against the defendant which was posted to 01-02-2012 for his evidence. As the petitioner-plaintiff was suffering with jaundice and was away from Tirupati, could not contact his counsel and also present before the Court for cross-examination. The suit came to be dismissed for default on 01-02-2012. After recovery, he contacted his counsel, who informed him about the order passed by the Court. Immediately thereafter the present application came to be filed on 28-06-2012 to condone

the delay of 119 days in filing an application under Order 9 Rule 9 of C.P.C.

3) A Counter came to be filed by respondent-defendant in I.A.No.570 of 2012 stating that no reasonable explanation is offered by the petitioner-plaintiff, except stating that he took treatment for white jaundice at Valajapet of Tamilnadu State.

4) Since no reasonable explanation has been given by the petitioner, seeking condonation of delay, the trial Court dismissed the said application. Challenging the same, the present Civil Revision Petition is filed.

5) The only ground urged by the learned counsel for the petitioner is that the petitioner could not attend the Court and could not contact his counsel because of his ailment and that he went to Tamilnadu State to take country treatment for jaundice. Having regard to the nature of treatment taken, he submits that he could not produce any documentary evidence in support of the treatment.

6) The learned counsel for the respondent-defendant reiterated the averments stating that as no documentary evidence has been produced by the petitioner-plaintiff in support of he taking treatment for jaundice at Valajapet, Tamilnadu, the present application sans merit.

7) If the plea of the petitioner-plaintiff is accepted to be true, it is very difficult for the petitioner-plaintiff to furnish documentary evidence in support of he taking country treatment at Valajapet, Tamilnadu. The fact remains that there is a delay of 119 days.

8) In *State of Bihar and others v. Kameshwar Prasad Singh and another*¹ the Apex Court held as under:

“11. Power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing of matter on merits. This court in *Collector, Land Acquisition, Anantnag v. Mst. Katiji*² held that the expression ‘sufficient cause’ employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of Courts. It was further observed that a liberal approach is adopted on principle as it is realised that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. ‘Every day’s delay must be explained’ does not mean that a pedantic approach should be made.

¹ (2000) 9 SCC 94

² (1987) ILLJ, 500 SC

Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of *mala fides*. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judicial is inspected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

9) Having regard to the judgment referred to above and taking into consideration the facts and circumstances of the case, the Civil Revision Petition is allowed condoning the delay of 119 days in filing the petition under Order 9 Rule 9 C.P.C. on payment of costs of Rs.500/ -.

10) Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

27.01.2017
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