

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION NO.1374 OF 2017

ORDER:

This Civil Revision petition, under Article 227 of the Constitution of India, by the unsuccessful petitioner/defendant, is directed against the orders, dated 17.01.2017, of the learned Principal District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad, passed in I.A.No.1928 of 2016 in O.S.No.1082 of 2014.

2. I have heard the submissions of Sri V.Sai Kumar, learned counsel for the defendant/petitioner herein (herein after, 'defendant' for brevity), and of Ms. Aarifa Imran Khan, learned counsel appearing for the respondents/plaintiffs, (hereinafter, 'plaintiffs' for brevity). I have perused the material record.

3. The facts which are necessary to be stated as a preface to this order, in brief, are as follows:

The plaintiffs brought the aforestated suit against the defendant for specific performance in respect of an agricultural land of an extent of Ac.2.00 guntas at Khalsa of Ibrahimpatnam Village, Cherlapatelguda Village, Ibrahimpatnam Mandal, more fully described in the schedule annexed to the plaint. After the defendant remained *ex parte*,

the suit was decreed, on 24.06.2015. Thereafter, the defendant filed an interlocutory application under Order IX Rule 13 of the Code of Civil Procedure, 1908, requesting to set aside the *ex parte* decree in the above said suit. However, as a delay of 364 days had occasioned in filing the said interlocutory application, the subject interlocutory application was filed under Section 5 of the Limitation Act, 1963, requesting to condone the said delay. The plaintiffs resisted the said application. On merits and by the orders impugned in this revision, the trial court dismissed the said petition. Hence, the defendant is before this Court.

4. The case of the defendant and the submissions made on his behalf in support of the request for condonation of delay, in brief, are as follows:

The suit for specific performance filed by the plaintiffs was decreed *ex parte*, on 24.06.2015. The defendant was set *ex parte* on the ground that he refused to receive the notices and the suit summons. The defendant came to know about the *ex parte* decree, on 21.06.2016, when he received the notice in E.P.No.4/2016. The defendant did not receive any notice/summonses from the Court. As such, the question of refusal of summons by the defendant does not arise at all. Indeed the plaintiffs failed to comply with the terms and conditions of the agreement; and, hence, the defendant

cancelled the suit agreement of sale by issuing a legal notice to the plaintiffs. The suit was filed with false allegations, by suppressing the said fact. The plaintiffs have played fraud not only upon the defendant but also on the Court and obtained an *ex parte* decree behind the back of the defendant. The said decree was obtained on the supposition that this defendant refused to receive the suit summons sent by the Court. In the circumstances, the defendant may be permitted to file his written statement and contest the suit on merits, after setting aside the *ex parte* decree passed in the suit. Since delay had occasioned in seeking to set aside the *ex parte* decree, the subject petition is filed for condonation of the said delay. The delay occasioned in the circumstances stated and not due to negligence or deliberate conduct of the defendant. If the *ex parte* decree is not set aside, the defendant suffers serious and irreparable loss. To show *bona fides*, the defendant filed the written statement in the suit. The defendant is prepared to abide by any terms that may be imposed by the court while setting aside the *ex parte* decree.

5. The case of the plaintiffs as stated in the counter of the 2nd plaintiff and the submissions made on their behalf, in brief, are as follows:

The material allegations in the affidavit of the defendant filed in support of the petition are false. The same are denied. When the defendant issued a notice with *mala fide* intentions, a suitable reply was sent by the plaintiffs. When the defendant committed the breach of the terms of the agreement, the plaintiffs are constrained to file the suit for specific performance. Suit notices/summonses were sent by the Court to the defendant by registered post as well as through the process server. The trial court also accorded permission to the plaintiffs to serve personal notice on the defendant. Despite several personal requests made on behalf of the plaintiffs, the defendant refused to take notice sought to be served personally upon the defendant. The allegation that the defendant never refused to receive the suit summonses is false. The Court's process server personally went to the premises of the defendant several times and found that the premises was locked. The postman also went to the premises of the defendant several times; but, the petitioner refused to receive the postal cover sent through Court with summons. Hence, the postal cover was returned with the endorsement 'refused to receive'. The record of the Court evidences the said facts. The plaintiff never played fraud either on the defendant or on the Court. Since the defendant bluntly refused to receive the notices/summonses sent personally and through process department of the Court

and also by post, he was set *ex parte* in the suit. He was observing the proceedings. Since the matter is now coming for execution of sale deed, he cunningly came with the present applications with untenable submissions and is abusing the process of law. The defendant's approach is *mala fide* and is intended to harass the plaintiff. The defendant's submissions do not deserve any consideration. The defendant is in habit of refusing notices. When legal notice, dated 20.08.2014, was sent to the defendant as well as his counsel, the defendant refused to receive the same, but his counsel received the said notice. Likewise, the defendant refused to receive another legal notice, dated 01.09.2014, whereas his counsel received the said notice. On entering into the contract of sale, the plaintiffs paid Rs.13,00,000/- on 13.05.2014, out of total sale consideration of Rs.30,00,000/- and with the said advance, the defendant cleared loans due to Shriram City Finance Limited and thereafter got issued a legal notice with untenable and unreasonable allegations; and the defendant failed to register the sale deed. The said notice was issued with oblique motives to knock away the said advance amount. When the plaintiffs issued notices, the defendant refused to receive the same. After the decree was granted, Rs.17,00,000/- was deposited to the credit of the suit as directed by the trial court. The said amount was deposited, on 28.05.2015, vide SBH Challan No.736. Now, it

is for the defendant to execute and register the sale deed and pay the costs of the suit to the plaintiffs. Immediately after deposit of the balance sale consideration as stated above, the plaintiff got issued a legal notice, dated 25.12.2015, calling upon the defendant to register the sale deed and pay the suit costs. To the said notice necessary documents were enclosed. The defendant received the said notice; but, did not comply with the demand in the notice. As such, E.P.No.4 of 2016 was filed. After the notice in the said E.P was received, the present petition and the petition to set aside the *ex parte* decree were filed with false, created and untenable allegations. The petitions are filed only to drag on the proceedings. Hence, the petition may be dismissed.

6. I have given earnest consideration to the facts and submissions. Before proceeding further, it is apt to note the well settled principle that expression 'sufficient cause' under Section 5 of the Limitation Act, 1963, should receive a liberal construction so as to advance substantial justice and what constitutes sufficient cause always depends upon the facts and circumstances of a particular case. It is also profitable to note the following settled propositions on the settled legal aspect 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 exercise discretion for the reason that whenever the court exercises discretion it has to be exercised judiciously.'

7. Reverting to the facts of the case, it is to be noted that the defendant is seeking condonation of delay in seeking to set aside the *ex parte* decree by *inter alia* submitting that no notice or summons are served in the suit upon him and that neither notice nor summonses were offered to be served upon him at any time and therefore, the question of his refusing to receive the same does not arise for consideration. However, the *ex parte* decree was passed after setting him *ex parte* on the ground that he refused to receive the notices/suit summonses. Therefore, the question is as to whether notices and the suit summonses were refused to be received by the defendant when the same were sought to be served upon him. During the course of the enquiry before the trial court, it appears that the defendant has filed Photostat copy of his passport and visa to show that he was not in the Country at the relevant time. Though the said document is not exhibited, the trial court adverted to the contents of the same in its orders. It appears from the record and it is undisputed

¹ AIR 2011 SUPREME COURT 1150

that the said document discloses that the defendant was not in India and was abroad during the period from 16.12.2014 to 16.03.2015. As per the Court record, as is evident from the observations in the order of the Court below, the suit summonses sent to the defendant by registered post were returned undelivered with the endorsement of the postman concerned. The said postal endorsement reflects that from 04.10.2014 to 18.10.2014, the petitioner refused to receive the said summonses sent by post. The order of the Court below also reflects that as per the report of the Nazarat, on 25.10.2014, the defendant has refused to receive the summons that were sought to be served personally upon him through the process department of the Court. The Court record further reflects that the report, dated 07.11.2014, submitted to the Court by the office discloses that the defendant refused to receive the notice that was sent in the interlocutory application in I.A.No.1943/2014. Along with the report, a photo of the petitioner is also filed stating that on 11.11.2014, when a notice was offered, he was present in the house and refused to receive the notice. Having considered the above stated facts and circumstances, the trial Court rightly concluded that the defendant was very much in the Country during the relevant period but he refused to receive the notices as well as summonses sent through process department of the Court and postal department and

that he thus refused to receive the suit summonses while in India and that he did not even take steps promptly for setting aside the order passed setting him *ex parte* in the suit even after his return from China to India.

8. When once the record manifests that the notice/summonses sought to be served on the defendant were refused to be received, the contention of the defendant contrary to the record of the Trial Court does not stand the test of scrutiny. In the explanation offered, except stating that summonses are not served, no other explanation is offered for the delay. When the contention that notice/the summons were not offered to be served and that the same were not refused to be received when sought to be served, is found to be incorrect, it follows that the delay cannot be condoned as it is well settled that when an applicant seeking condonation of delay makes an incorrect statement in the application, the Court ought to refuse to condone such delay more particularly when the delay is inordinate.

9. Now it is apt to note that in **Esha Bhattacharjee V/s Managing Director of Raghunathpur Nafar Academy and others**², the Supreme Court having referred to the decisions and discussed the principles related to the issue pertaining to

² 2014 (1) ALD 21 (SC)

the condonation of delay culled out the broad principles and gave further, the following guidelines:

- (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

³ 2014 (4) ALD 1 (SC)

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.”

10. On the above analysis of the facts and the legal position obtaining and for the reasons recorded supra, this court finds that no cause much less sufficient cause is shown for condonation of the long delay and that the Court below is justified, in the facts and circumstances of the case, in dismissing the application filed by the defendant for condonation of delay and that there is no merit in the revision.

11. In the result, the revision petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this case shall stand closed.

M.SEETHARAMA MURTI, J

17.08.2017

SS