

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No.2420 OF 2017

Dated:20.06.2017

Between:

Ambati Vijaya, W/o. Srinivas,
Aged about 43 years, Occ: Household,
R/o.H.No.1-7-1028, Santhoshnagar,
Balasamudram, Hanamkonda,
Warangal and others

.. Petitioners

AND

Katuku Sambaiah, S/o. Papaiah,
Aged about 57 years, Occ: Agriculture,
R/o.H.No.2-10-195, Waddepally,
Hanamkonda, Warangal and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**CIVIL REVISION PETITION No.2420 OF 2017****ORDER:**

Petitioners are plaintiffs. They filed O.S.No.1158 of 2011 on the file of II Additional Junior Civil Judge, Warangal, for permanent injunction restraining the defendants and their men from interfering with their lawful and peaceful possession and enjoyment. However, the said suit was dismissed on 09.11.2012 for not prosecuting the same. Therefore, they filed I.A.No.592 of 2014 under Section 5 of the Limitation Act seeking condonation of delay of 396 days in filing a petition for restoration of the suit. On elaborate consideration of the issue, the trial Court, by order dated 17.02.2017, refused to condone the delay and dismissed the said I.A. Aggrieved thereby, this revision is filed.

2. The trial Court noticed that the suit was coming up for commencement of evidence. Issues were drafted on 14.03.2012 and the case was adjourned to 25.04.2012 for trial. Thereafter, the suit underwent adjournments on 04.07.2012, 08.08.2012, 12.09.2012, 17.10.2012 and 09.11.2012. On none of these dates, plaintiffs were present. Having regard to the history of the case, the trial Court was not inclined to condone the delay.

3. As noticed from the order of the trial Court and the pleadings in the affidavit filed in support of the petition to condone the delay, the only plea raised was that plaintiffs were under the impression that their case was transferred to V Additional Junior Civil Judge's Court, Warangal, and only recently they came to know that their case was not transferred and that the suit was dismissed for

default. This was the only reason assigned by the petitioners for condoning the delay. This stand of the petitioners was opposed by the respondents contending that the suit was never transferred and the plea raised was not valid. The trial Court, opining that the reason assigned was not valid since there was no occasion for the plaintiffs to assume that their case could have been transferred, observed that if any case is transferred from one Court to another Court, notice would be given to the parties and advocates and also displayed in the notice board of the Court. Admittedly, this case was not transferred and there was no cause for the plaintiffs to assume that their case was transferred. It is also noticed that if the assumption of the petitioners was valid that their case could have been transferred to V Additional Junior Civil Judge's Court, prudence required that they should have ascertained from the respective Courts the next date of adjournment. As noticed by the trial Court in paragraph No.6 of the order under revision, several adjournments were granted and on none of the dates plaintiffs were present. In the revision, for the first time, the petitioners sought to raise a plea that there was no communication from their counsel.

4. Learned counsel for the petitioners by placing reliance on the decision of the Supreme Court in **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy**¹ contended that the principles laid down by the Supreme Court in the said decision ought to have been applied to the facts of the case on hand and liberal approach is required to condone the delay. He would submit that there was no deliberate delay caused

¹ 2014 (1) ALD 21 (SC)

in seeking restoration of the suit and grave prejudice would be caused to the petitioners, if the suit is not restored.

5. In **Esha Bhattacharjee**, the Supreme Court found fault with condonation of inordinate delay of 2449 days in filing the appeal against the interim order.

6. On elaborate consideration of the decisions, the Supreme Court culled out the principles that should be followed in considering the applications for condonation of delay. In paragraph Nos.15 and 16 of the judgment, it is held as under:

“15. From the aforesaid authorities the principles that can broadly be culled out are:

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the Courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the Counsel or litigant is to be taken note of.

(v) Lack of *bona fides* imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the Courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed to a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration of few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation of taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

16. To the aforesaid principles, we may add some more guidelines taking note of the present day scenario. They are:

“(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 within 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.”

7. It is also appropriate to extract paragraph No.22 of the said judgment. It reads as under:

“22. ... It should have kept itself alive to the following passage from **N. Balakrishnan v. M. Krishnamurthy** reported in 1998 AIR SCW 3139.

“The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit *finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

8. These observations of the Supreme Court in **N. Balakrishnan's** case aptly apply to the present case.

9. In the case on hand, no justification is shown for their absence on several occasions when the suit was listed. The plea raised by the petitioners that they were under the impression that the suit was transferred to V Additional Junior Civil Judge's Court,

Warangal, is not valid, since no such presumption can be drawn on transfer of suit. The pleadings are vague. It appears from the pleadings that there was no serious endeavour in prosecuting the case and the averments made are in casual manner as if in the matter of course delay should be condoned.

10. Having regard to these facts, I do not see any error committed by the trial Court warranting interference by this Court and the revision is liable to be dismissed.

11. The Civil Revision Petition is accordingly dismissed. There shall be no order as to costs.

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

Date:20.06.2017

KH

P. NAVEEN RAO, J

