

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5743 OF 2015

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed assailing the order dated 17.12.2015, in I.A. No.1279 of 2013 in unnumbered appeal suit, passed by the Senior Civil Judge, Chirala, whereby the petition filed under Section 5 of the Limitation Act, 1963, to condone delay of 2753 days in representing the returned appeal, was dismissed.

The case of the petitioners is that they filed appeal on 12.12.2005 challenging the decree and judgment dated 05.11.2005 in O.S. No.242 of 2003 passed by the Principal Junior Civil Judge, Chirala, without complying the requirements to register the appeal. The said appeal was returned on 28.12.2005 and the same was re-presented without complying office objections. Again the appeal was returned on 06.01.2006. Subsequently, they re-presented the appeal along with the petition under Section 5 of the Limitation Act to condone delay of 2753 days on the ground that the previous counsel on record did not inform about the fate of the appeal and simply kept the returned bundle in another bundle. The petitioners being illiterates are not aware of the procedure and therefore for the negligence of the counsel, the petitioners shall not be put to any loss and prayed to condone delay.

The respondent filed counter denying material allegations *inter alia* contending that the petitioners participated in execution proceedings in E.P. No.31 of 2006 wherein petitioner No.4 herein was examined as R.W.1. But they are negligent in prosecuting the proceedings. Hence they are disentitled to claim discretionary relief

to condone delay of 2753 days and prayed for dismissal of the petition.

The learned Senior Civil Judge, Chirala, upon hearing argument of both the counsel, dismissed the petition holding that the petitioners are aware about the proceedings and participated in execution proceedings in E.P. No.31 of 2006 in O.S. No.242 of 2003 on the file of Principal Junior Civil Judge, Chirala.

A bare look at the allegations made in the affidavit annexed to the petition, the counsel for the petitioners filed an appeal without complying necessary formalities required to register the appeal, on its return again re-presented without complying the objections raised by the office of the court and again returned for compliance of the objections, but the returned bundle was kept with the advocate.

No doubt advocate is negligent to some extent. The petitioners maintained silence for 2753 days, having participated in execution proceedings. A person, who is sleeping for years together, is not entitled for discretionary relief under Section 5 of the Limitation Act.

In **Pundlik Jalam Patil (dead) by LRs. V. Executive Engineer, Jalgaon Medium Project and another**¹ the Apex Court referred Salmond jurisprudence, where the Salmond observed that laws come to the assistance of the vigilant and not of the sleepy. On the same principle, the Apex Court held as follows:

“the person, who is not vigilant, is not entitled to claim benefit under Section 5 of Limitation Act since the laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "Statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is

¹ (2008) 17 SCC 448

essential for public order. The principle is based on the maxim '*interest reipublicae ut sit finis litium*' that is, the interest of the State requires that there should be an end to the litigation, but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their remedies promptly."

If this principle is applied to the present facts of the case, the petitioners, who slept for more than 7 years exhibiting sheer negligence in re-presenting the appeal, are disentitled to claim discretionary relief of condonation of abnormal delay.

In **P.K.Ramachandran v. State of Kerala and another²**, the Apex Court held that Law of limitation may harshly affect a particular party, but it has to be applied with all its rigor when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds.

In **Srinivasa Book Depot, Book Sellers, Nizamabad and others V. Bank of India, Kumargally Branch, Nizamabad³** a similar question came up before this court, wherein it was held that where public funds are involved, the Court should be liberal in condonation of delay. However, it is too difficult to generalize such a proposition and relieve the institutions from the responsibility and obligation to assign reasons. The question of there being liberal or other approach would arise if only there are certain reasons. If no reasons exist, it is too difficult to condone years of delay based on the ground that the

² AIR 1998 SC 2276

³ 2003(1) ALD page 126

affected party is an institution dealing with public funds. Equally important are the rights conferred upon citizens by law.

If the principles laid down in the above judgments are applied to the present facts of the case, on account of abnormal delay of 2753 days, though the respondent filed execution petition before the Principal Junior Civil Judge, Chirala, and even during the pendency of the execution proceedings, the petitioners did not raise their little finger to re-present the appeal, this itself establishes negligence of the petitioners in prosecuting the proceedings in the appeal, which disentitles them to claim condonation of delay of 2753 days.

The petitioners are expected to file a petition under Rule 3-A of Order XLI of CPC, but they filed petition under Section 5 of Limitation Act. However, wrong quoting or misquoting of law is not a ground to register the appeal, if the petitioner is otherwise entitled. But in both the petitions, the petitioners have to satisfy the court that they were prevented by sufficient cause.

The word 'sufficient cause' is not defined anywhere, but it can be construed as a cause which is beyond the reasonable control of the petitioners.

Time and again, the Apex Court held that the court has to construe the word 'sufficient cause' liberally. It does not mean that such construction is to be stretched to frustrate the very intention of the legislature in prescribing the limitation to life span of the litigation. If such liberal approach is adopted to frustrate the substantive law of limitation on the ground of equity, it amounts to jettisoning the substantive law of limitation permitting the parties to approach the court whenever they like raising one ground or the

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other which are artificial. Therefore, I find that such liberal interpretation to frustrate the intention of the legislature cannot be given to the word 'sufficient cause'.

On overall consideration of material available on record, I find that the cause mentioned in the petition is not sufficient in view of the participation of the petitioners in execution proceedings in O.S. No.242 of 2003 before the Principal Junior Civil Judge, Chirala. Hence, the order passed by the Senior Civil Judge, Chirala, is free from any legal infirmity, warranting interference of this court by exercising power under Article 227 of the Constitution of India. Consequently, the civil revision petition is liable to be dismissed.

In the result, the Civil Revision Petition is dismissed. No costs.

Miscellaneous petition, if any, pending in the civil revision petition shall stand closed.

20.07.2017
BV

M.SATYANARAYANA MURTHY, J