

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.6065 of 2016

ORDER:

Heard.

2. The present civil revision petition is filed under Article 227 of the Constitution of India aggrieved by the order dated 15.09.2016 passed in I.A.No.637 of 2012 in O.S.No.2 of 2010 on the file of Principal Junior Civil Judge, Puttur, Chittoor District, wherein an application filed under Section 5 of the Limitation Act to condone the delay of 289 days in filing the petition under Order 9 Rule 13 of CPC was allowed.

3. The facts in issue are as under:

The respondent/plaintiff filed a suit seeking permanent injunction in respect of suit schedule property which was posted to 03.02.2010 for appearance. The first defendant engaged an advocate and gave vakalat. The vakalat was filed on 03.02.2010 and when the same was adjourned for filing of written statement, both the parties consented and the plaintiff promised to withdraw the suit. Presuming that the suit would be withdrawn, the defendants did not approach his counsel for filing written statement. As there was no written statement filed, the Court below passed an exparte order on 21.07.2011 decreeing the suit. Thereafter, the defendants filed I.A.No.637 of 2012, seeking condonation of delay in filing a petition to set aside the exparte decree, which was allowed.

Aggrieved thereby, the present Civil Revision Petition came to be filed by the plaintiff.

4. Admittedly, the plaintiff filed a suit for permanent injunction in respect of the plaint schedule property, which was decreed exparte on 21.07.2011. Pursuant to the exparte decree, the plaintiff filed execution petition against the defendants in E.P.No.36 of 2011. Since the petitioners and other defendants violated the orders passed by the Court below, the said E.P. was allowed and the arrest warrant came to be issued against the petitioner and other defendants. Thereafter, the plaintiff again preferred E.P.No.83 of 2013 under Order 21 Rule 32 of CPC stating that the defendants along with their henchmen were causing trouble to the plaintiff in enjoyment of the plaint schedule property. While things stood thus, the defendants filed an application to condone delay as well as another petition in the year 2012 to set aside exparte decree. It is stated that the application to condone the delay of 289 days in filing petition under Order 9 Rule 9 of CPC was filed stating that the village elders advised both the parties to compromise the issue to which the plaintiff agreed. Hence, there was delay in contesting the suit. It is stated that the defendants did not proceed with the matter in view of the advice given by the elders. But the plaintiff disputes the same stating that there was no such compromise. It is also to be noted that the suit was not decided on merits. Only an exparte order is passed. It is further stated that the plaintiff also filed two execution petitions wherein one execution petition is disposed of while the other is pending for orders due to pendency of this petition. Further, the defendants while claiming to set aside the

exparte decree, claimed rights and possession over the plaint schedule property. In view of the same, it would be helpful to both the parties if the suit is disposed of on merits.

5. Dealing with application filed to condone the delay, the **Apex Court in S.Ganeshraju (dead) through LRs. and another Vs. Narasamma (dead) through LRs. and others¹**, held as under:

“The expression “sufficient cause” as appearing in Section 5 of the Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice. Unless the respondents are able to show *mala fides* in not approaching the Court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the Courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by.

The rules of Limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.”

Further, this Court in **Agolapu Raju Vs. Agolapu Gangaram²** while referring to the above judgment stated that it is always fair and appropriate that the matters should be heard on merits rather than shutting the door of the justice at the threshold. Infact, the Apex Court held that refusal to condone the delay would result in foreclosing the suitor from putting forth his cause. It is categorically held that the rules of limitation are not meant to destroy or foreclose the rights of the parties. It would be

¹ (2013) 11 SCC 341

² 2015 (6) ALD 532

appropriate to direct the parties to contest the matter on merits giving go-bye on technicalities and if the delay is not condoned, substantial rights of the parties would be affected.

6. In view of the judgments referred to above; having regard to the circumstances of the case and taking into consideration the length of delay in filing the application, which cannot be said to be on higher side, it cannot be said that the order by the Court below is blatantly illegal or erroneous and warrants interference by this Court.

7. Accordingly, the C.R.P. is dismissed. It is needless to mention that the plaintiff shall co-operate for early disposal of the suit, which shall be completed as early as possible preferably, within a period of three months from the date of receipt of a copy of the order. No costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

17.03.2017
vhh