

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5641 of 2017

ORDER:

1) In spite of service of notice, there is no representation on behalf of the respondents.

2) Aggrieved by the order, dated 24.08.2017, passed in I.A.No.641 of 2016 in O.S.No.62 of 2004 on the file of the Senior Civil Judge, Peddapuram, wherein an application filed under Section 5 of Limitation Act to condone the delay of 625 days in filing applications under Order 22 Rule 4 and Order 22 Rule 9 of C.P.C. was dismissed, the present Civil Revision Petition is filed under Section 115 of C.P.C.

3) The facts in issue are as under:

The petitioner herein filed O.S.No.62 of 2004 seeking declaration of right, title and possession of the plaintiff over the schedule property; and for consequential injunction against the defendants and their people from interfering with his possession and enjoyment over the schedule property. In the said suit, the evidence of plaintiff was over and the suit was coming up for the evidence of the defendants, who are contesting the suit. While things stood thus, defendant No.1 died on 14.03.2014, which fact came to the knowledge of the plaintiff recently. Hence, he filed an application to bring the legal representatives of defendant No.1 on record. Since there was some delay in filing the said applications,

he filed an application under Section 5 of the Limitation Act, to condone the delay of 625 days, which came to be rejected. Challenging the same, the present Civil Revision Petition came to be filed.

4) Learned counsel for the petitioner mainly submits that the delay in filing the applications to bring the legal representatives of defendant No.1 was neither wilful nor wanton.

5) As stated earlier, there is no representation on behalf of the respondents, inspite of service of notice.

6) 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

¹ (2000) 9 SCC 94

² (1987) ILLJ, 500 SC

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. 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) In [State of Nagaland v. Lipok Ao and others](#)³ the Apex Court held as under:

"Proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. What constitutes sufficient cause cannot be laid down by hard-and-fast rule section."

³ (2005) 3 SCJ 558

10) From the judgments of the Apex Court referred to above, it is clear that delay can be condoned if the circumstances of the case indicate that meritorious matter is being thrown out and the cause of justice being defeated, if the delay is not condoned. The Apex Court has categorically held that even if the delay is condoned, the highest that can happen is that a cause would be decided on merits, after hearing the parties.

11) In the instant case, the suit is for declaration and title. It is to be noted here that entire evidence of plaintiff is over and the case is posted for defendants' evidence. The plaintiff was not aware about the death of defendant No.1 and the said fact came to his knowledge recently, which is evident from the affidavit filed in support of the petition. In view of the judgments referred to above; taking into consideration the facts in issue, and the nature of suit, the impugned order is liable to be *set aside* and the delay is condoned.

12) Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

08.12.2017
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