

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.6531 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order dt.09.11.2016 in I.A.No.67 of 2016 in O.S.No.807 of 2014 passed by Principle Senior Civil Judge, Rangareddy District, declining to condone delay of 334 days in filing a petition to set aside the *ex parte* order dt. 16.10.2014 in O.S.No.807 of 2014.

The Revision Petitioner filed an application before the trial Court to condone delay of 334 days in filing a petition to set aside the *ex parte* order, alleging that the petitioner engaged Sri D. Elisha Rao, Advocate, as a counsel and he filed Vakalat on his behalf on 05.09.2014 and later the suit was posted on 12.09.2014 for filing Written Statement. The learned counsel did not inform the date of hearing and he also did not inform about the necessity to file Written Statement. Later, he came to know that his counsel is non-practicing Advocate and he did not prosecute the proceedings properly. When he tried to contact his counsel, there was no response and later he gave complaint against his counsel before Bar counsel.

The second ground urged in the affidavit is that his wife was suffering from ill-health since 2003 and none to take care of her, though she was admitted in Ganesh General Hospital on 26.09.2017 and the Doctor advised her to take bed rest for some time. It is further contended that he has to take care of his old aged mother, who is residing with him while taking care of his wife and produced medical certificates in support of his contention and thus, the petitioner was prevented by a cause, which is beyond his control, and prayed to set aside the Order dt.09-11-2016 condoning delay of 334 days in filing a petition to set aside the *ex parte* order dt.16.10.2014.

The respondent filed Counter denying the material allegations while contending that the petitioner was not prevented by a cause, which is beyond his control, and prayed for dismissal of the petition.

Upon hearing both the counsel, the trial Court concluded that the contention that the counsel did not inform the petitioner about the case proceedings is false on the face of the record and also disbelieved the alleged sufferance of his wife due to ill-health and her admission in Ganesh General Hospital on 26.09.2017 including the illness of his mother, dismissed the petition.

Aggrieved by the Order dt. 09.11.2016, the present Civil Revision is filed on various grounds, mainly contending that the Medical Certificates and GPF loan application were not properly considered as the names and age mentioned in the certificates produced before the Court are different and in one certificate the age was mentioned as 40 years and in another certificate, the age was mentioned as 64 yrs, but, that itself is not a ground to reject the petition and prayed to set aside the Order dt.09.11.2016.

During hearing, learned counsel for the petitioner reiterated the grounds urged before the trial Court and requested to afford an opportunity to contest the matter, whereas the respondent opposed the petition on the ground that when the petitioner approached the Court with false allegation, he is disentitled to seek condonation of abnormal delay of 334 days under Section 5 of Limitation Act in filing a petition to set aside the *ex parte* order.

The first and foremost ground raised by the counsel for petitioner is that the petitioner engaged Sri Alisha Rao, Advocate, who filed Vakalat on behalf of the petitioner allegedly on 12.09.2014 and the petitioner remained *ex parte* on 23.09.2014. But, the trial Court after verifying the entire record, concluded that Sri Alisha Rao filed Vakalat on behalf of defendant on 12.06.2014 and the matter

underwent several adjournments for filing Written Statement i.e., 07.08.2014, 05.09.2014 and 12.09.2014 and on 12.09.2014 it was finally posted to 23.09.2014 though 90 days period to file written statement is over and inspite of granting several adjournments, the petitioner did not pursue the proceedings in the suit properly.

The contention that the counsel did not inform the date of adjournment and he is non-practicing advocate is not based on any material and in fact filing of Vakalat itself shows that he is a practicing Advocate and it is for the petitioner to take care of his own case, contact his counsel and get it prosecuted. On mere asking on the ground that Counsel did not inform the date of adjournment etc., the delay cannot be condoned.

The second ground urged before this Court is that he is taking care of his ailing wife and old aged mother, thereby he could not contact his counsel. Curiously, the petitioner is an employee in Revenue Department and he attended the duty on all working days. But, the contention of the petitioner is that he is taking care of his ailing wife who was admitted in Ganesh General Hospital while looking after his old aged mother. When he is able to discharge his official duty regularly, nothing prevented the petitioner from prosecuting the proceedings. Even otherwise, when he is

able to attend on his mother and wife at two different places, nothing prevented him to meet his counsel to prosecute the proceedings. Moreover, the petitioner approached the Court with false allegation and produced false certificates to substantiate his contention. The trial Court observed that there is a lot of difference between prescriptions and the medical certificates produced before the Court while requesting to exercise discretion under Section 5 of Limitation Act to condone delay. When the petitioner approached the Court with false allegations, the Court cannot exercise such discretion to condone abnormal delay. Therefore, the trial Court rightly declined to exercise its discretion in view of the falsity in the plea *ex pacie*. Though law of limitation harshly affects the rights of the parties, but it has to be applied with all its rigor when the statute prescribed limitation and the Court has no such power to extend on equitable grounds. The discretion exercised by the trial Court is neither improper nor injudicious and the Order cannot be interfered by this Court while exercising jurisdiction under Article 227 of the Constitution of India and such discretion can be exercised only when the trial Court failed to exercise jurisdiction, which is vested on it or failed to exercise jurisdiction, which is not vested on it or exercised jurisdiction irregularly or illegally. In the absence of any material satisfying three

conditions, this Court cannot interfere with the Order passed by the trial Court, which is purely discretionary in nature. Therefore, I find no ground warranting interference of this Court while exercising jurisdiction under Article 227 of the Constitution of India and consequently, the Civil Revision Petition is liable to be dismissed.

Accordingly, this Civil Revision Petition is dismissed.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

Date: 27-06-2017.
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M. SATYANARAYANA MURTHY, J



HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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