

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1297 of 2011

ORDER:

This Civil Revision Petition, under Section 115 of CPC, is filed questioning the Order dt. 31.12.2010 in I.A.No.1333 of 2009 in O.S.No.100 of 2017, dismissing the application filed under Section 5 of Limitation Act to condone delay of 460 days from 27.09.2007 to 30.12.2008 in filing a petition under Order 9 Rule 13 CPC.

Respondent No.1 therein filed counter denying the material allegations *inter alia* contending that the allegations are frivolous and false on the face of the record and not by a single document to support her version, which prevented by a sufficient cause for a prolonged period of 460 days, and therefore, there are no grounds to condone abnormal delay of 460 days and prayed for dismissal of the petition.

Upon hearing both the counsel, the trial Court dismissed the petition holding that the petitioner did not produce any medical evidence in support of her contention that she was bedridden due to Jaundice and Typhoid Fever for a prolonged period of 460 days and disbelieved the case set up by the petitioner.

Aggrieved by the order, the present Revision is filed on various grounds, mainly on the ground that the suit was filed for partition of suit schedule property and the petitioner was suffering from such ailments, which prevented her from filing a petition under Order 9 Rule 13 CPC, and that the Court has to adopt justice oriented approach and liberal approach while deciding an application filed under Section 5 of Limitation Act and prayed to set aside the Order passed by the trial Court.

During hearing, learned counsel for the petitioner, reiterated the grounds urged in the revision petition while drawing attention of this Court to two medical certificates issued by Praja Vaidyashala, Maternity and Surgical Nursing Home, Hyderabad Road, Chevella, Rangareddy District dt. 27.02.2008 and Area Hospital, Golconda, APVVVP, Hyderabad, dt. Nil and on the strength of those documents, he contended that the petitioner was prevented by sufficient cause from filing the petition under Order 9 Rule 13 CPC and prayed to set aside the order passed by the trial Court.

The only reason assigned by the petitioner, which prevented her to file a petition under Order 9 Rule 13 CPC, is that she suffered from Jaundice and Typhoid fever. The trial Court observed in its Order that no sufficient medical evidence was produced before the Court to condone abnormal delay of 460 days when she set up a ground that she suffered from such diseases. The contention of the petitioner is that the petitioner filed two medical certificate before the trial Court. If really, the petitioner was admitted in the hospital and treated for Jaundice and Typhoid Fever and advised her to take bed rest for a period of three months i.e., from the date of admission on 27.02.2008, as per the Certificate issued by Praja Vaidyashala, the three months period was expired on 27.05.2008 and therefore, she is bound to regain her health but she invented a different story of suffering from ill health from 20.01.2008 to 01.03.2008 i.e., two months 20 days approximately and when the petitioner was advised to take bed rest for a period of three months from 27.02.2008 in view of the certificate issued by Praja Vaidyashala dt. 27.02.2008, how she suffered from Typhoid Fever during the said period is unexplained. The period of bed rest as per the certificate dt. 27.02.2008 is expired by 20.05.2008 and within three days thereafter she was complaining some ailment and treated by Civil

Assistant Surgeon on 21.03.2008 for a period of two months 20 days i.e., from 20.01.2008 to 01.03.2008, but the present application was filed after 30.12.2008 i.e., after nine months from the date of her recovery from illness. The delay of nine months was not explained by the petitioner in her entire affidavit. Even if her sufferance from ill health is accepted covered by two medical certificates, in the absence of any explanation for the period from 01.03.008, the Court cannot condone delay on the ground that she suffered from ill health prior to 01.03.2008. When the petitioner failed to mention any sufficient cause, which prevented her from filing an application, the Court cannot accept such contention and condone abnormal delay of more than Nine months.

In *Lanka Venkateswarlu (died) By Lrs v. State of AP*¹, wherein the Apex Court expressed its displeasure in para No.26 of the Judgment for condoning delay on the concept of liberal approach, justice oriented approach and substantial justice, and held as follows:

“We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay”.

Though the limitation harshly affects the rights of the parties, the Court is obligated to implement the law of limitation in its letter and spirit, as held by the Apex Court in *P.K. Ramachandran v. State of Kerala and another*².

In view of the law declared by Apex Court in two pronouncements referred supra, in the absence of any reason, dismissal of application by the trial Court refusing to condone delay of 460 days is free from any illegality warranting interference of this Court while

¹ AIR 2011 SC 1199

² AIR 1998 SC 2276

exercising power under Section 115 of CPC and consequently, this Civil Revision Petition is liable to be dismissed as it devoid of merits.

Accordingly, this Civil Revision Petition is dismissed.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 26-02-2018
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



CRP No.1297 of 2011

Dt. 26-02-2018

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