

The Hon'ble Sri Justice M.Satyanarayana Murthy

Civil Revision Petition No.5038 of 2011

Order:

This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, 1908 (CPC), challenging Order, dated 22-10-2011, in IA.No.527 of 2010 in OS.No.80 of 1996 on the file of the Junior Civil Judge, Madakasira.

By the aforesaid order, the petition filed by the petitioners under Section 5 of the Limitation Act, 1963 (for short 'the Act') to condone the delay of 645 days in filing the LR petition was dismissed with costs. The petitioners filed the aforesaid suit for partition and separate possession of the suit schedule property. During the pendency of the suit, the 4th defendant- Kuruba Chikkappa died leaving behind him his legal heirs, who succeeded his estate. As there is a delay of 645 days in bringing on record his legal heirs, the aforesaid petition was filed by the petitioners.

The reason put forth by the petitioners for the delay in filing the LR petition was that they were not aware of the death of the said Chikkappa as he is staying in Karnataka.

Respondent Nos.2 and 3 filed a counter and respondent No.1 adopted the same by filing a memo.

The respondents contended that the petitioners are aware of the death of the said Chikkappa as he is none other than their cousin; that as on the date of his death, Chikkappa was staying in A.R.Roppam only and not in Karnataka; that the petitioners have also attended his cremation process; and that as there is no sufficient cause to condone the delay of 645 days in filing the LR petition, the respondents prayed for dismissal of the Petition.

The Court below, upon hearing the arguments of both the Counsel, held that the cause shown by the petitioners is not sufficient cause to condone the abnormal delay of 645 days in filing the LR petition and dismissed the same.

The learned Counsel for the petitioners, while contending that the reason assigned by the lower Court for dismissal of the petition is not supported by any material. It is submitted that when substantial rights of the parties are involved in the case, the Court can exercise the power under Section 5 of the Limitation Act, 1963 (for short 'the Act'),

and condone the delay in filing the petition by construing the cause shown by the petitioners liberally. He further submitted that the Court below did not appreciate the contentions raised by the petitioners in proper perspective and committed an error in dismissing the petition. In support of his submission, he placed reliance on the judgment of the Apex Court in **Bhagwan Swaroop and others vs. Mool Chand and others**¹.

Perused the judgment cited supra. In the said judgment, the Apex Court, while deciding an application under Order 22 Rule 4 (5) CPC, held that the Court cannot adopt a pedantic approach and even if negligence and laches are established on the part of the party, who seeks to set aside the abatement, the application should be entertained only in rarest of rare cases for furthering the ends of justice.

The above principle is applicable only in case of the petitions filed under Order XXII Rule 9 CPC, but not in case of the petitions filed under Section 5 of the Limitation Act, 1963. Therefore, the judgment in **Bhagwan Swaroop and others** (1 supra) relied upon by the learned Counsel for

¹ (1983) 2 Supreme Court Case 132

the petitioners has no application to the petition filed under Section 5 of the Limitation Act.

In a suit filed for partition of the suit schedule property, the parties must be either coparceners or joint owners or partners of a business. In the present case, the deceased Chikkappa was none other than the cousin of the petitioners. When their cousin, who is a coparcener, died, the petitioners were supposed to be aware of it. But, curiously, they pleaded that they were not aware of his death as he was residing in Karnataka State and that the delay was neither intentional nor wanton. The reason assigned by the petitioners is not substantiated by any evidence. Moreover, the respondents denied the same by contending that the petitioners being cousins had attended the cremation ceremony of the said Chikkappa, hence, the reason assigned by the petitioners that that they were not aware of the death of their co-parcener, who is a party to the suit, is neither believable nor acceptable. Therefore, such a cause cannot be construed as sufficient cause, which prevented the petitioners from filing petition to bring legal heirs of the deceased defendant on record.

Undoubtedly, the word ‘sufficient cause’ can be construed liberally without adopting any pedantic approach, but, at the same time, the word ‘sufficient cause’ cannot be stretched to the extent of frustrating the intention of legislature in incorporating or fixing the period of limitation.

In the judgment of the Apex Court reported in **Lanka Venkateswarlu (died) by L.Rs. vs. State of A.P. and others**², 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” cannot be employed to jettison the substantial law of limitation, especially in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation act, the Courts do not enjoy unlimited and unbridled discretionary powers. All

² 2011(1) U.P.L.J. (Unique Purpose Law Journal) page 242 (SC)

discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.”

In another judgment reported in **P.K.Ramachandran vs. State of Kerala and another**³, 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. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained.

In view of the principles laid down by the Apex Court in the judgments referred to supra, when the Court finds that the cause shown by the petitioners is not genuine, basing on the concepts of substantial justice and complete justice, substantive law of limitation cannot be jettisoned and delay cannot be condoned on mere asking/setting up an absurd or improbable ground. In view of the same, the Court below

³ AIR 1998 Supreme Court page 2276

has rightly dismissed the petition filed by the petitioners under Section 5 of the Act and the order under challenge is free from any legal infirmity warranting interference of this Court in exercise of its power under Section 115 CPC.

The Civil Revision Petition is, accordingly, dismissed.

As a sequel, interim order, dated 06-01-2012, as extended by further order, is vacated and CRPMP.No.7152 of 2011 is disposed of as infructuous.

(M. Satyanarayana Murthy, J)

Dt: 24th January, 2018
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