

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NOS.1045 and 1241 of 2018

COMMON ORDER:

CRP No.1045 of 2018

This Civil Revision Petition under Article 227 of the Constitution of India is filed questioning the Docket Order dt. 07.12.2017 in I.A.No.740 of 2017 in O.S.No.289 of 2008 passed by the Additional Junior Civil Judge, Kukatpally at Miyapur, whereby the delay of 573 days in filing the petition to restore the suit, which was dismissed for default, was allowed.

The petitioners herein are defendants before the trial Court and the respondent herein is the plaintiff in the suit. The respondents herein/plaintiff filed a petition under Section 5 of Limitation Act to condone delay of 573 days in filing petition under Order IX Rule 9 CPC, alleging as follows"

" I submit that I filed suit for perpetual injunction against the respondents/defendants and the same is coming for further evidence of plaintiff on 14.03.2016 and also imposed costs of Rs.500/- for non producing the further evidence, but non appearance of my counsel, this Hon'ble Court was pleased to dismiss the suit for default " and " I submit that due to ill health, I am unable to approach my counsel in time for producing the further evidence and non appearance before this Hon'ble Court is neither wilful nor wanton due to the above said reason only and no prejudice will be caused to the respondent/defendants herein if this petition is allowed by setting aside the dismissal orders dt. 14.03.2016, and requested to set aside the Order condoning delay of 573 days in filing the petition.

The respondents/defendants filed Counter denying the material allegations *inter alia* contending that the petitioner/plaintiff has failed to explain day to day delay and the reasons for delay that occurred in filing the petition, except vague allegations, which is not acceptable, and requested to dismiss the petition.

The trial Court upon hearing both the counsel, passed a cryptic order running into one page while observing as follows:

“ On perusal of record, it is contended that due to ill health, he could not approach his counsel, in the meanwhile, the suit was dismissed for default. On the other hand, the reasons mentioned in the petition are vague and not proper. After going through the petition and counter and after hearing both sides, it was felt that a fair chance may be given to the petitioner to put forth their version before the Court. The valid right of petitioner cannot be denied. No doubt, there is abnormal delay of 573 days in filing the set aside petition against the Order dt.14.03.2016. Hence, this Petition is allowed as to meet the ends of justice and afford a fair chance to the petitioner to ventilate his grievance. Hence, this Petition is allowed on payment of cost of Rs.5,000/- payable to MLSA by 27.12.2017, failing which, this Petition stands dismissed.”

Aggrieved by the Order, the respondents/defendants preferred this Revision mainly contending that when the allegation is made that she was suffering from ill health, the Court, without insisting upon any proof in support of ill health i.e., certificate issued by any medical practitioner while observing that reason mentioned in the petition is not sufficient and condoned delay in the name substantial justice, which is impermissible under law, and that the trial Court passed the Order contrary to the principle laid down in *M. Shyamala vs District Panchayat Officer*¹ and that delay was not explained properly, but the trial Court committed an error in allowing the petition without recording any reason for such acceptance of the cause shown by the petitioner therein as sufficient cause for condoning abnormal delay and prayed to set aside the Order passed by the trial Court.

During hearing, learned counsel for the petitioners, contended that the reason assigned by the respondent herein/plaintiff is not sufficient and in the absence of any material in support of the proof, the trial Court is not expected to pass such an order and placing reliance on a judgment

¹ 2006 (6) ALD 240

reported in *Basawaraj and another v Special Land Acquisition Officer*² and whereas the learned counsel for the respondent/plaintiff while supporting the Order impugned in all respect, placed reliance on the judgment reported in *P. Sunki Reddy and another v Khaja Jiyavoddin and others*³ and *V. Linga Reddy and others v V.Pam Reddy and others*⁴ and based on these principles laid down in the above judgments, the learned counsel for the petitioners, requested this Court to affirm the Order passed by the trial Court dismissing the petition filed by the petitioners herein/defendants.

The reason I have extracted is clear that delay was due to ill-health of the respondent herein/plaintiff and thereby she could not approach her counsel for production of further evidence. The suit was dismissed on 14.03.2016; whereas the petition before the trial Court was filed on 09.10.2017. But, the petitioner made bald allegations that due to ill health she was unable to approach his counsel. The affidavit filed in support of the petition is bereft of details like date of commencement of ill health and her recovery from ill health or where she was treated or whether she was treated for 573 days at her residence etc., In the absence of details, based on bald allegations, not supported by any medical evidence, acceptance of such reason as sufficient cause is a grave error committed by the trial Court and the trial Court having observed that reason mentioned in the petition is vague and not proper, condoned delay to give a fair chance to the respondent herein/plaintiff to put forth their version before the Court. When once the Court concluded that the reason is vague and not proper, allowing such an application with a view to give fair chance is an illegality and contrary to the principle laid down

² (2013) 14 SCC 81

³ 2002 (4) ALD 365 (DB)

⁴ 2011 (6) ALD 425

in *Lanka Venkateswarlu (died) By Lrs v. State of AP*⁵ and therefore, the order passed by the trial Court is liable to be set aside since the petitioner therein did not substantiate the ground urged in the petition for condoning abnormal delay of 573 days. It is not her case that she was treated for her ill-health not by any doctor and did not furnish the details of recovery etc., but, based on bald allegation, the trial Court passed the erroneous order, which is impugned in this revision.

Learned counsel for the petitioners/defendants contended that condonation of delay as a matter of routine is deprecated and the counsel drawn the attention of this Court to the judgment reported in *Basawara*'s case (2 supra), wherein the Apex Court after analysing the law laid down by the Apex Court in the earlier judgments, and concluded that the expression " sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of *bona fides* cannot be imputed to the party concerned, whether or not sufficient cause has been furnished., can be decided on the facts of a particular case and no straight jacket formula is possible. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. The statutory provision may cause hardship or inconvenience to a particular party, but the Court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means ' the law is hard but it is the law' stands attracted in such a situation. It has consistently been held that 'inconvenience is not 'a decisive factor to be

⁵ AIR 2011 SC 1199

considered while interpreting a statute and finally the Court concluded that where a case has been presented in the Court beyond limitation, the applicant has to explain the Court as to what was the 'sufficient cause', which means an adequate and enough reason which prevented him to approach the Court within limitation. In case a party is found to be negligent or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone delay. No Court could be justified in condoning such an inordinate delay by imposing any condition whatsoever.

The principle laid down by the Apex Court is applicable to the present facts of the case, the facts of the case on hand are worse than the facts of the judgment.

The petitioner simply stated that she was suffering from ill health and unable to approach the counsel for production of further evidence. But, this was not substantiated by any material. Therefore, accepting such reason as sufficient cause would amount to failure to enforce the obligation of the Court with its full rigour though it is an inconvenience situation to party, who is not diligent in prosecuting the proceedings. The petitioner not only in prosecuting suit but also in filing the present petition exhibited sheer negligence on her part with great confidence that the Court will accept whatever reason assigned as sufficient cause for condoning delay adopting liberal and justice oriented approach, which would amount to jettisoning the substantial law of limitation, as observed by the Apex Court in *Lanka Venktaeswarlu's* case referred supra.

Learned counsel for the respondent/plaintiff while supporting the Order placed reliance on a judgment reported in *R. Sunki Reddy's* case (3 supra), where the Division Bench of this Court held that a petition was

filed for condoning delay of 4 years in filing CMA and same was allowed while observing as follows:

“ During the course of hearing, it came to light that the learned counsel appearing for the appellant filed applications straight away for setting aside the Order of dismissal for restoration of CMA without filing an application for condonation of delay of four years, and that petition was dismissed. Though this Court is expressing its anguish over the foreign standards on the legal profession, neither there is any improvement in the conduct of the advocates nor the Bar Council is taking any remedial measures to see that the members of legal fraternity acts with the required diligence to protect the interest of litigant public. Hence, the delay was condoned. “

The reason in the facts of the judgments is the latches on the part of the Advocate, but here, it is not so. Therefore, the principle laid down in the above judgment cannot be applied to the present facts of the case. In *V. Linga Reddy's* case (4 supra), referred supra, the Court held that sufficient cause to receive liberal construction so as to advance substantial justice . What constitute sufficient cause always depends upon the facts of a particular case and length of delay is not determining factor. In the above judgments, the Court concluded that the Word sufficient cause must be given liberal construction without adopting pedantic approach, but that does not mean that the Court has to accept whatever the reasons party assigned as sufficient cause to condone delay under Section 5 of the Limitation Act. When a special reason is assigned i.e., illhealth, for a period of 573 days in filing the petition, there must be some material, at least to the satisfaction of the Court to arrive a just conclusion that the plaintiff was prevented by a sufficient cause, which is not beyond her control. In the absence of any material, acceptance of such reason is nothing but jettisoning the law of limitation, as observed by the Apex Court in *Lanka Venkateswarlu's* case (5 supra). Therefore, the Order passed by the trial Court is erroneous on the face of the record and passing of such an order without any material to

substantiate the reason assigned by the petitioner for her failure to prosecute the proceedings and the Order did not stand to legal scrutiny and therefore, it is liable to be set aside by allowing this present Revision Petition.

In the result, this Civil Revision Petition is allowed setting aside the Order dt. 07.12.2017 in I.A.No.740 of 2017 in O.S.No.289 of 2008 passed by the Additional Junior Civil Judge, Kukatpally at Miyapur.

C.RP.NO.1241 OF 2018

In view of the Orders passed in Civil Revision Petition No.1045 of 2018, no further adjudication is required in the present Revision. Accordingly, this Civil Revision Petition No.1241 of 2018 is dismissed as infructuous, in view of the orders passed in CRP No.1045 of 2018.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 20-11-2018
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M. SATYANARAYANA MURTHY, J

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Dt. 20-11-2018

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