

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.1405 of 2018

ORDER:

This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908, ('the Code', for brevity) by the petitioner/ appellant/ defendant is directed against the orders, dated 29.01.2018, of the learned Principal District Judge, Nalgonda, passed in I.A.no.1393 of 2016 in AS SR.No.1289 of 2014 filed under Order XLI Rule 3-A read with Section 151 of the Code for condoning the delay of (181) days in filing the aforementioned proposed first appeal suit against the decree and judgment, dated 10.10.2013, of the learned Junior Civil Judge, Ramannapeta, passed in O.S.no.189 of 2007.

2. I have heard the submissions of the learned counsel for the revision petitioner and of the learned counsel for the respondent. I have perused the material record.

3. The case of the revision petitioner, in brief, is as follows:

The sole plaintiff/respondent herein brought the suit against the defendant/revision petitioner herein for perpetual injunction. The said suit was decreed, on 10.10.2013. Having sustained shock after knowing the result of the suit, the defendant/revision petitioner went into depression; his old ailments amplified; and, he suffered heart pain and rheumatic pains in joints of the body due to fluorination and was bed ridden. Therefore, he could not contact his counsel and give necessary instructions for preferring an appeal within the time allowed under law. A delay in 181 days has occasioned in preferring the appeal. The said delay is not due to intentional and wanton reasons; but, was due to the circumstances, which are the beyond the control of the revision petitioner. Hence, the present revision is filed for condonation of the said delay in preferring the appeal suit.

4. The case of the respondent herein, in brief, is as follows:

The material allegations in the affidavit of the defendant/petitioner herein are false. The reasons stated in support of the request for condonation of delay are denied. The revision petitioner did not mention the name of the hospital in which he received treatment and also the name of the Doctor who treated him and he failed to file any proof in support of the cause shown for condonation of delay. The number of days of delay is not correctly mentioned. The appeal was preferred after a long delay of 260 days. Hence, the petition for condonation of delay is not maintainable and is liable for dismissal.

5. At the hearing, learned counsel for both the parties reiterated the respective contentions of the respective parties.

6. Learned counsel for the petitioner submitted that valuable rights in respect of immovable property are involved in the suit; that a reasonable and valid explanation was offered for condonation of delay; that the learned District Judge ought to have accepted the explanation and condoned the delay and ought to have given an opportunity to have the appeal suit decided on merits; that the order impugned which is passed on mere observations that the delay is not properly explained and that no document is filed in support of the explanation offered is unsustainable under facts and in law as the law is well settled that the words 'sufficient cause' employed in the provision of law shall receive a liberal construction and that in order to do substantial justice between the parties technical Rules or Procedures should not be given precedence over doing substantial justice.

7. On the other hand, the learned counsel for the respondent supported the orders of the Court below.

8. It is well settled principle that expression 'sufficient cause' should receive a liberal construction so as to advance substantial justice and what

constitutes sufficient cause always depends on the facts and circumstances of a particular case. Hence, the application need not be rejected merely on the ground of inordinate delay, but the test shall be whether sufficient cause is made out for the delay.

9. Before proceeding further, it is apt to note the following settled propositions on the settled legal aspects regarding condonation of delay:

‘The statutory provision mandates that while considering the applications for condonation of delay, the applicants are required to show sufficient cause for condonation of such delay. Condonation of delay is a matter of discretion of the Court. The words ‘sufficient cause’ should receive liberal construction so as to achieve substantial justice. However, while condoning the delay; the Court should not forget the opposite party altogether. A liberal approach is to be adopted in considering the application for condonation of delay on the ground of sufficient cause. The concept of such a liberal approach cannot be equated with doing injustice to the other party. The court cannot condone the delay in a case where the Court concludes that there is no justification for the delay. The discretion has to be exercised within the reasonable bounds known to the law. Whims or fancies, prejudices or predilections could not form the basis for exercising the discretionary power. When the delay is directly a result of negligence or default or inaction of a party, such delay cannot be condoned on mere asking of that party. When an applicant makes an incorrect statement in an application seeking condonation of delay, the Court ought to refuse to condone such delay or inordinate delay. When the explanation offered is a sufficient cause for condonation of delay, but the delay that deserves to be condoned is a long delay, such delay is generally condoned by imposition of adequate costs as compensation to offset the delay in hearing and disposal of the case. Length of delay is no matter and the acceptability of the explanation is the only criterion. If there is no acceptable explanation, sometimes a delay of shorter length may also be uncondonable whereas in certain other times, the delay of a very long range can be condoned provided sufficient cause is shown.’ The expression ‘sufficient cause’ is a cause for which the defendant could not be blamed. [Vide the decision of the Supreme Court in *Parimal v. Veena*¹]. In this decision, it was also held as follows: ‘However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the

¹ AIR 2011 SUPREME COURT 1150

reason that whenever the court exercises discretion it has to be exercised judiciously.’

10. Keeping in view the settled principles, the instant application has to be disposed of.

11. Learned counsel for the revision petitioner would submit that valuable rights in respect of the immovable property are involved and that if the delay is not condoned and an opportunity is not given to the defendant/ appellant to have the appeal suit decided on merits, he would be put to serious loss and that he would once and for all lose his right, title and interest in respect of the suit schedule property, which is a valuable immovable property and that, therefore, it is in the interests of justice to condone the delay and give an opportunity to him to have the appeal suit decided on merits. Though the learned counsel for the respondent opposed for condonation of delay on the ground that the delay is a long delay and that no documentary proof is filed, in the light of the settled legal principles, which are noted supra, this Court is of the considered view that on that ground the delay is a long delay, the request to condone the delay need not be refused. Undoubtedly, justice according to the law does not merely mean technical justice but means that law is to be administered to advance justice as held in a decision of the Supreme Court in *Pankajbhai Rameshbhai Zalavadia vs. Jethabhai Kalabhai Zalavadiya (deceased) through L.Rs. and Ors.* [(2017)9SCC700].

12. This Court is of the considered view that the explanation offered in the facts and circumstances of the case can be considered as a sufficient cause and for mere non filing of documentary proof regarding illness, the application need not be dismissed. There are no circumstances to find that the delay is directly due to negligence or inaction of the revision petitioner. Having regard to the afore stated facts, circumstances and the legal position, this Court is satisfied that the petitioner can be given an opportunity to have his appeal suit

decided on merits as in the considered view of the Court, the length of the delay is no matter and the acceptability of the explanation is the only criterion and as the explanation offered constitutes a sufficient cause for condonation of the delay. In that view of the matter, this Court finds that the facts and circumstances of this case afford sufficient grounds to exercise the discretion in favour of the revision petitioner/ proposed appellant.

13. On the above analysis, this Court finds that the order impugned is liable to be set aside and that the interlocutory application filed for condonation of delay in preferring the first appeal deserves to be allowed.

14. In the result, the revision petition is allowed and the impugned orders, dated 29.01.2018, of the learned Principal District Judge, Nalgonda, passed in I.A.No.1393 of 2016 in AS SR.No.1289 of 2014 are hereby set aside and the said application is allowed. Since the appeal suit was instituted in the year 2014 and is sufficiently an old appeal suit, the learned Principal District Judge shall endeavor to hear and dispose of the appeal suit, on its registration, as expeditiously as possible and in any event preferably before 30.06.2018.

Pending miscellaneous petitions, if any, in this revision shall stand dismissed. There shall be no order as to costs.

23.04.2018
Vjl

M. SEETHARAMA MURTI, J