

**HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**C.R.P. No.3579 OF 2016**

**ORDER:**

This petition is filed under Article 227 of the Constitution of India by the 3<sup>rd</sup> defendant challenging the order dated 22.02.2016 passed in I.A.No.1062 of 2015 in O.S.No.108 of 2016 by the Senior Civil Judge, Mangalagiri, Guntur District.

Respondents 1 to 4 filed suit for various reliefs and the plaint was returned for compliance of certain objections. As the plaint was not represented within time, there was delay of 1068 days in representing the suit. Hence, the petition under Section 148 and 151 C.P.C. to condone the delay was filed on the ground that Sri J.Nageswara Rao, who is appearing for respondents 1 to 4, to whom the suit was entrusted was expired, and hence, it could not be represented after his life time. As such there was delay of 1068 days in representing the plaint. The Court below while noting the reason for delay explained in the petition, did not accept the same while observing as follows:

*"The delay occurred is 1068 days i.e. nearly 3 years. Day to day delay was not explained, at least month to month delay was not explained, even year to year delay was not explained. Thus, I thought allowing the petition with terms Rs.2,000/- will meet the ends of justice."*

The Court below did not accept the reason for delay and concluded that respondents 1 to 4/petitioners failed to explain delay properly and that allowing such application is contrary to the principles laid down in **Lanka Venkateswarlu (D) by OL.Rs. v State**

**of A.P. and others<sup>1</sup>**, which was carried in SLP before the Apex Court, the Apex Court had an occasion to decide what is sufficient cause and powers of the Court to condone the delay 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’ 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 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 and fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.”*

Applying the principle laid down in the above judgment, the impugned order is liable to be set aside since the Court below having concluded that the delay was not explained, but allowed the petition and such finding is a serious illegality. Considering the principles laid down by this Court in **K.Prakash Rao v Singareni Collieries Col Ltd and others<sup>2</sup>**, **Gandeay Shravan Kumar v D.Srinivalusu (died) per L.Rs. and others<sup>3</sup>**, and by the Madras High Court in **Assistant Manager, Indian Overseas Bank, Chennai v Managing Director,**

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<sup>1</sup> AIR 2011 SC 1199

<sup>2</sup> 1993(3) ALT 517

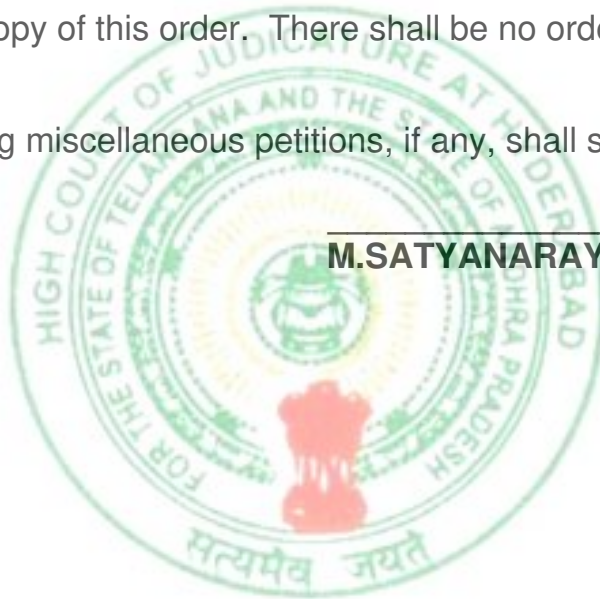
<sup>3</sup> 2004(1)ALD) 639

**M/s Global Powertech Equipment Pvt. Ltd., Chennai and others<sup>4</sup>,**  
**and D.Muralidharan v Chinnappan (died), Pavathal<sup>5</sup>,** the impugned  
 order is liable to be set aside while remanding the interlocutory  
 application to the Court below.

In the result, the civil revision petition is allowed setting aside  
 the order dated 22.02.2016 passed in I.A.No.1062 of 2015 in  
 O.S.No.108 of 2016 by the Senior Civil Judge, Mangalagiri, Guntur  
 District and remanded to the Senior Civil Judge, Mangalagiri for fresh  
 disposal in accordance with law within a month from the date of  
 receipt of a copy of this order. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

12.11.2018  
 kvrm



**M.SATYANARAYANA MURTHY,J**

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<sup>4</sup> 2017 Law Suit (Mad) 3021

<sup>5</sup> (2007) 4 MLJ 635