

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P. No.3182 OF 2018

ORDER:

This civil revision petition is filed under Section 115 of the Code of Civil Procedure (for short 'CPC') questioning the order dated 25.01.2008 passed in I.A.No.1311 of 2016 in O.S.No.26 of 2008 by the Principal Senior Civil Judge, Kadapa dismissing the petition filed under Section 5 of the Limitation Act to condone the delay of 1860 days in filing the petition under Order IX Rule 13 C.PC..

The petitioner/defendant filed petition before the Court below alleging that the respondent filed suit for recovery of Rs.2,48,000/- on the strength of promissory note dated 22.12.2004 allegedly executed by the petitioner, but he never borrowed any amount and never executed any promissory note. The said suit was posted to 01.03.2011, but on that day the petitioner was unable to file written statement, the petitioner was set exparte. It is contended that the respondent also filed complaint in C.C.No.144 of 2018 against the petitioner and the same was disposed of on 29.11.2009 by the Judicial Magistrate of First Class, Jammalamadugu, finding the petitioner not guilty and acquitted him. The petitioner got himself confused on the ground that the respondent/plaintiff filed calendar case and that it was disposed of and he was not aware of the suit proceedings. Only after receiving notice in E.P.No.61 of 2016 in the above suit, the petitioner came to know that exparte decree was passed against him and prayed to condone the delay in filing petition to set aside the exparte decree.

The respondent filed counter denying the material allegations, *inter alia* contending that the petitioner engaged counsel

by name P.Raghunatha Reddy, Advocate in the said suit and that the petitioner is a Government employee working as Senior Assistant in Primary Health Centre and drawing Rs.75,000/- per month and that the wife of the petitioner also working as Teacher in Elementary School, Jammalamadugu and that the petitioner has no confusion between the two matters and that the abnormal delay cannot be condoned in filing the petition to set aside the exparte decree.

The trial Court upon hearing arguments of both counsel, dismissed the petition on the ground that the explanation offered by the petitioner is not reasonable, which prevented him to prosecute the case. Aggrieved by the order of the Court below, the present revision petition is filed on the ground that the reasons assigned by the petitioner is sufficient, which prevented the petitioner from filing the petition within the stipulated time under Order IX Rule 13 C.P.C. and that the trial Court did not considered the explanation given by the petitioner for his failure to file application within the stipulated time and therefore, the trial Court committed grave error in dismissing the petition and requested to set aside the order passed by the Court below and condone the delay of 1860 days in filing the petition to set aside the exparte decree.

Learned counsel for the petitioner reiterated the grounds urged in the petition and that the counsel for the respondent supported the order passed by the trial Court.

As seen from the allegations made in the affidavit filed along with the petition under Section 5 of the Limitation Act, the petitioner admitted that the suit was posted to 01.03.2011 for filing written statement, but he was unable to attend the Court on that

day and unable to file written statement in the said suit, which is evident from the record that the petitioner engaged counsel and thereafter maintained silence for a long period and filed petition to condone the delay of 1860 days on receipt of notice in E.P.No.61 of 2016. When the petitioner engaged counsel and the suit was posted for filing written statement, he cannot plead that he is ignorant of the pending proceedings.

Yet the contention of learned counsel for the petitioner is that the petitioner got himself confused due to disposal of C.C.No.144 of 2008 and the suit is pending before the Court. The calendar case is of the year 2008 and the suit was also of the same year, but for two different reliefs in two different Courts and the petitioner is an employee working as Senior Assistant in Primary Health Centre and he is not a layman and highly literate. When the petitioner is literate and prosecuting the proceedings both in civil and criminal Courts by engaging counsel, now the petitioner cannot contend that he confused on account of filing two cases.

To exercise power under Section 5 of the Limitation Act though it is discretionary in nature, it is for the petitioner to prove, that he was prevented by sufficient cause. What is sufficient cause was not explained and the same can be said to be a case which is beyond his control. In this case, the petitioner was Government employee and prosecuting the criminal and civil cases by engaging counsel and when the suit was posted for filing written statement, he did not file written statement for one reason or the other. Therefore, when the petitioner received summons and having engaged counsel, failed to file written statement, now he cannot plead that he was prevented by a cause which is beyond his control

and that the confusion is unfounded and misplaced. In the absence of the cause which prevented the petitioner from appearing before the Court, this Court cannot exercise power under Section 115 C.P.C.

The apex court in ***Lanka Venkateswarlu (Died) by L.Rs. v State of A.P. and others***¹, wherein it was 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 or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.”

In ***P.K. Ramachandran Vs. State of Kerala and another***², the Apex Court held as follows:

“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

¹ 2011 (1) UPLJ 242 SC

² AIR 1998 SC 2276

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 law declared by the Apex Court, I find that the grounds raised by the petitioner, which prevented him from filing written statement is not sufficient to condone the abnormal delay of 1860 days and consequently, the revision petition is liable to be dismissed as the jurisdiction of this Court is limited under Section 115 C.P.C.

Accordingly, the civil revision petition is dismissed. No costs.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

17.08.2018
kvrn



M.SATYANARAYANA MURTHY,J