

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.4564 of 2018

ORDER :

Assailing the order dated 16.11.2017, passed in I.A.No.2068 of 2015 in MVOP No.577 of 2014, on the file of X Additional District and Sessions Judge at Visakhapatnam at Anakapalle, wherein an application filed under Section 5 of Indian Limitation Act to condone the delay of 222 days in filing the petition, the present revision is filed, under Section 115 of the Civil Procedure Code.

2. The facts in issue are as under:

The petitioners herein filed M.O.P.No.577 of 2014 against the respondents claiming compensation for the death of the wife of petitioner No.1 in a motor vehicle accident occurred on 27/28.08.2011. On 19.12.2014, when the matter was posted for trial, neither the counsel nor the petitioner attended the Court. Hence, the trial Court dismissed the said M.O.P. for default. It is stated that as the petitioner-wife of the deceased went to her in-laws house in Tamil Nadu, she was not present before the Court during trial. On coming to know about the dismissal, the petitioner-wife filed a petition under Order 9 Rule 9 of C.P.C. to set aside the dismissal order along with the petition under Section 5 Limitation Act to condone the delay of 222 days.

A counter came to be filed by the insurance company stating that the petitioner-wife failed to explain the day to day delay. After considering the material on record the trial Court dismissed the petition. Aggrieved by the same, the petitioners preferred the present Civil Revision Petition.

The affidavit filed in support of the application to condone the delay would show that due to ill health the petitioner could not contact his counsel and nothing was informed by his counsel about the same. Immediately after coming to know about the same, he filed a restoration petition along with the delay condonation petition. It is urged that delay in filing the application is neither wilful nor wanton but only due to his ill health.

3. The issue that arises for consideration is whether the delay of 222 days in filing a petition to set aside the dismissal order in M.O.P.No.577 of 2014 can be condoned.

4. The main ground urged by the learned counsel for the petitioners is that the petitioners were not present on that day as the wife along with her children were at Tamil Nadu at in-laws house, after death of her husband and as such she could not get the matter restored or file an application to condone the delay. It is pleaded that if the delay is not condoned, she would be put to irreparable loss as they would not get their compensation to which they are entitled. The same is opposed by the learned counsel for the respondents.

5. In ***G.P.Srivastava v. R.K.Raizada and others***¹, the Apex Court held as under:

“The "sufficient cause" for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time. If "sufficient cause" is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits.”

6. In ***State of Bihar and others v. Kameshwar Prasad Singh and another***² the Apex Court held as under:

“11. Power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing of matter on merits. This court in *Collector, Land Acquisition, Anantnag v. Mst. Katiji*³ held that the expression ‘sufficient cause’ employed by the legislature in the Limitation Act is adequately elastic

¹ (2000) 3 SCC 54

² (2000) 9 SCC 94

³ (1987) 1 LLJ, 500 SC

to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of Courts. It was further observed that a liberal approach is adopted on principle as it is realised that:

- 1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.
- 2) Refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
- 3) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
- 4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
- 5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of *mala fides*. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6) It must be grasped that judicial is inspected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

7) From the judgments of the Apex Court referred to above, it is clear that delay can be condoned if the circumstances indicate that meritorious matter would be thrown out and the cause of justice would be defeated, if the delay is not condoned. The Apex Court has categorically held that even if the delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

8) It is to be noted that the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the injured/claimant is the paramount consideration, the Courts should always endeavour to extend the benefit to the injured to a just and reasonable manner. In view of the judgments referred to above; taking into consideration the facts in issue, and the nature of claim made, the impugned order is liable to be *set aside* and the delay is condoned.

9) In view of the judgment referred to above, having regard to the circumstances of the case, the request of the petitioners seeking to condone the delay of 222 days in filing the petition to restore M.V.O.P.No.577 of 2014 can be considered.

10) Accordingly, the Civil Revision Petition is allowed, setting aside the order dated 16.11.2017, passed in I.A.No.2068 of 2015

in MVOP No.577 of 2014, on the file of X Additional District and Sessions Judge at Visakhapatnam at Anakapalle.

11) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

C.PRAVEEN KUMAR, J

Date: 21.12.2018
vhh

