

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.5294 OF 2017

ORDER:

The present Civil Revision Petition is filed by the revision petitioner under Article 227 of the Constitution of India aggrieved over the order, dated 23.08.2017, dismissing I.A. No.2139 of 2016 in unnumbered A.S. /2016 (GR No.4127, dated 20.07.2016) filed under Order XLI, Rule 3A of the Code of Civil Procedure, 1908 (for short 'Code') to condone the delay of 65 days in preferring the appeal, by the learned District Judge, Srikakulam.

2. The facts would show that the revision petitioner filed suit in O.S. No.163 of 2009 on the file of the learned Principal Senior Civil Judge, Srikakulam against respondents herein for grant of right of passage. The learned Senior Civil Judge, by his judgment, dated 28.03.2016, dismissed the suit. Against the dismissal decree, the revision petitioner intended to prefer an appeal. In that context, when there was a delay of 65 days, he filed the aforesaid Interlocutory Application to condone the delay of 65 days in preferring the appeal.

3. Before the learned District Judge, in the direction of substantiating 'sufficient cause', the ground agitated by him was that, he was searching for a suitable counsel of his choice, and in the meanwhile, he happened to go on Pilgrimage along with his family

and, therefore, he could not file the appeal in time and meanwhile Summer Vacation had fallen.

4. The aforesaid request was resisted to by respondent Nos.1, 3 and 4 by filing their counter, insisting to explain the day-to-day delay in preferring the appeal which according to them, the revision petitioner failed to explain.

5. The learned District Judge referring to the ruling relied on by the learned counsel for the respondents in **Majji Somulu @ Swamynaidu v. Majji Nagaraju @ Nagesh and others**¹, applying the expression that if the delay is so long, the criteria for acceptance or rejection of explanation for the delay rests on the *bona fides* of the factual explanation offered by the revision petitioner, arrived at the conclusion that the revision petitioner since failed to file any scrap of paper to show that he happened to search a suitable counsel and later went on pilgrimage and that he was prevented in preferring the appeal in time and further observing that the revision petitioner only filed the petition to drag on the litigation instead of showing any substantial reason to condone the delay, refused to condone the delay and rejected the said application.

6. That has been the reason why the present Civil Revision Petition is filed. In paragraph No.8 of the order under challenge, the learned District Judge refers to the emphasis laid by the Hon'ble

¹. 2015 (6) ALT 301

Supreme Court and various High Courts that the Court must not be pedantic in its approach in deciding the condonation application and shall not dismiss them on the mere ground that delay was too long, but, still, referring to the ruling in **Majji Somulu @ Swamynaidu**¹ rejected the request.

7. When substantial right is involved for adjudication, the right to appeal cannot be deprived of on the mere ground that there was delay in preferring the appeal. No doubt, it is obligatory on the part of the revision petitioner to satisfy the 'sufficient cause' in requesting to condone the delay. But, when the law laid down by the Hon'ble Supreme Court is to the effect that the approach should not be in assessing non-explanation for day-to-day delay, certainly, the resistance offered by the respondents that the revision petitioner ought to explain day-to-day delay ought not to have taken into consideration and ought to have assessed the reason assigned as well as the right involved and ought to have decided the application. What should be the approach is sufficiently explained by the Hon'ble Supreme Court in **Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others**², laying down the six guidelines in paragraph '3 '. It would be appropriate to refer to the expression of the Hon'ble Supreme Court thus:

"The legislature has conferred the power to condone delay by enacting S.5 of the Indian Limitation Act of 1963 in order to

². AIR 1987 SC 1353

enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a 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 judiciary is respected 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.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner.....”

8. The cause shown by the revision petitioner to condone the delay in preferring the appeal is associated with three-factors. First, he was searching out for a suitable counsel of his choice; second, he went on Pilgrimage with his family; and third, there was intervention of summer vacation. It is true so far as the third reason is concerned, the decree was passed on 28.03.2016, and limitation was for one month for preferring appeal and it could be said that summer vacation intervening before he presenting Memorandum of Appeal along with interlocutory application. So far as the first and second reasons assigned by him in order to show sufficient case is concerned they cannot be overlooked. It is difficult for any party to get documentary evidence to prove that he was searching for a suitable advocate of his choice.

9. Be that as it may, when the delay is only 65 days and reasons assigned by the revision petitioner would constitute ‘sufficient

cause' if liberal approach is resorted to applying the guide-lines laid down by the Hon'ble Supreme Court in **Mst. Katiji²**.

10. In view of the aforesaid discussion, the Civil Revision Petition is allowed setting aside the order, dated 23.08.2017, passed by the learned District Judge, Srikakulam in I.A. No.2139 of 2016 by allowing the same and condoning the delay of 65 days in preferring the appeal. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the revision case, stand closed.

January 02, 2018.
Mgr

A. SHANKAR NARAYANA, J

