

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2419 OF 2017

ORDER:

The present Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 (for short 'Code'), is filed by the petitioners - appellants - plaintiffs, challenging the order, dated 15.02.2017, passed in I.A. No.483 of 2016 in A.S.S.R. No.7414 of 2016, by the Chief Judge City Civil Court, Hyderabad.

2. The petitioners filed an appeal along with petition under Order XL1, Rule 3A of the Code read with Section 5 of the Limitation Act, 1963 (for short 'Act, 1963') to condone delay of 754 days in preferring the appeal, on the ground that after pronouncing the judgment by the trial Court, her brother - plaintiff No.1 expired on 04.07.2010, and petitioner No.2 herein is the sole legal heir and successor of her brother, unable to take any steps since her earlier advocate did not inform regarding the receipt of certified copies of judgment and decree, she was totally kept in dark about the result of suit though, she was regularly approaching him. She is not aware about the legal proceedings due to death of her brother, but she could get prepared appeal on 04.04.2012 with the assistance of Typist sitting in the Court complex and in the meanwhile, due to intervention of summer vacation, she could contact the counsel, who after perusing the judgment of the trial Court and other documents, corrected the appeal and advised her to file a petition for condonation of delay.

Therefore, there is delay of 754 days in preferring the appeal and requested to condone the delay in filing the appeal by exercising power under Order XLI, Rule 3A of the Code.

3. Respondent - Andhra Bank opposed the petition and requested to dismiss the same.

4. The learned Chief Judge, City Civil Court, Hyderabad, passed a two sentences order. But, as seen from the material, as no counter is filed by the respondent, it was treated as no counter, by order, dated 23.08.2016 and recorded its finding that the delay is abnormal and is more than two years, dismissed the petition since the grounds stated by the petitioner No.2 are not sufficient to condone the abnormal delay of 754 days.

5. Aggrieved by the order, the present petition is filed on various grounds, mainly reiterating the grounds mentioned in the affidavit filed along with delay petition and extracting some of the judgments of Hon'ble Supreme Court and other Courts. Most of the grounds of revision are only extraction of principles laid down in various judgments, except that there is nothing.

6. During hearing, learned counsel for the petitioners while reiterating the grounds urged in the petition, drawn the attention of this Court to several judgments reported in **G. Govindappa v. P.R.**

Ramakrishna Rao¹, rendered by a learned Single Judge of this Court; **Manoharan v. Sivarajan**², rendered by a Division Bench of Apex Court; **Majji Somulu alias Swamy Naidu v. Majji Nagaraju alias Nagesh**³; **Smt. Sharda Dhir v. Ashok Kumar Makhija**⁴; **State of Bihar v. Kameshwar Prasad Singh**⁵; and **Smt. Lachi Tewari v. Director of Land Records**⁶, where the Apex Court dealt with the principles governing Section 5 of the Act, 1963. Based on the principles laid down in the above judgments while reiterating the contentions urged in the petition, the learned counsel, Sri T.N.M. Ranga Rao, would submit that explanation submitted by petitioner No.2 is sufficient cause which prevented her from filing an appeal before the Court, and requested to set aside the order under challenge and allow the revision as substantial rights of the parties are involved in the suit.

7. No representation for the respondent despite making appearance.

8. The bare contention raised in the affidavit filed in support of the petition is that after delivery of judgment by the trial Court, her brother - plaintiff No.1 was passed away. She is the only legal heir who succeeded the estate of her brother, but no steps were taken by her to file an appeal as she was totally kept in dark, but she could prepare the appeal on 04.04.2012 with the assistance of Typist sitting

¹. 2017 (2) ALD 10

². 2014 (2) ALT 6 (SC)

³. AIR 2015 Hyderabad 203

⁴. AIR 2003 Delhi 288

⁵. (2000) 9 SCC 94

⁶. AIR 1984 SC 41

in the Court Complex and later entrusted the appeal to the present counsel on record. This contention itself indicates that petitioner No.2 is aware of passing of the judgment and decree, even she could prepare the appeal on 04.04.2012 itself. When petitioner No.2 is aware about passing of judgment and decree and got prepared the appeal on 04.04.2012, what prevented her from presenting the appeal before the appellate Court, immediately, was not explained. The reason for non-presentation of appeal immediately is that summer vacation was intervened. But, the summer vacation generally starts in the month of May not in the month of April. Therefore, the contention that due to intervention of summer vacation, she could not file the appeal before the appellate Court is totally incorrect.

9. The expiry of plaintiff No.1 after pronouncing the judgment and decree is an undisputed fact, when she is aware about passing of judgment and decree before death of her brother, she would have at least taken steps to file an appeal against judgment and decree before the competent Court. She kept quiet for such a long period of more than two years and leisurely got prepared the appeal grounds on 04.04.2012 with the assistance of Typist sitting in the Court complex and later presented the appeal on 04.06.2012. The very filing of appeal along with petition on 04.06.2012 having got prepared memorandum of appeal on 04.04.2012 itself is sufficient to conclude that there is any amount of negligence on the part of the petitioner No.2 in prosecuting the proceedings. When there is negligence on the

part of petitioner No.2, the Court cannot exercise its discretionary power to condone delay under Order XLI, Rule 3A of the Code.

10. The learned counsel for the petitioner mostly relied on the decisions of the Apex Court in **Manoharan v. Sivarajan**², **Kameshwar Prasad Singh**⁵ and **Smt. Lachi Tewari**⁶. Though, the law is clear that Court has to adopt liberal approach while considering sufficient cause but without adopting pedantic approach, it does not mean that the Court must always accept whatever the reasons assigned by the parties, more particularly when petitioner is negligent in prosecuting the proceedings. Even if the allegations made in the affidavit filed along with petition are accepted, petitioner No.2 having got prepared the appeal on 04.04.2012, kept quiet for another two months, and leisurely presented the appeal on 04.06.2012. This itself is sufficient to conclude that petitioner No.2 is negligent in prosecuting the proceedings, and such negligent petitioner is not entitled to claim discretionary relief from the Court under Order XLI, Rule 3A of the Code. When sufficient cause is not shown, delay cannot be condoned in view of the law declared by the Supreme Court in **Lanka Venkateswarlu v. State of Andhra Pradesh**⁷, 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

⁷ (2011) 4 SCC 363

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 **D. Vidya Bai v. Anil Kumar R. Kamdar**⁸, learned Single Judge of this Court, while deciding a petition under Section 5 of Limitation Act held as follows:

“It has to be seen whether a party has approached the court with clean hands, whether there are latches on the part of said party, whether he is negligent, whether the explanation is convincing and, whether sufficient reasons for the delay have been shown. When a party is guilty of protracting the litigation on one ground or the other or playing hide and seek game and is negligent or careless in prosecuting the matter, the court, however the period of delay it may, whether it is long or short, need not condone the delay.

⁸. 2012 (1) ALT page 405

What is to be seen is whether the explanation is reasonable or not; Whether there is any grain of truth in it or not; Whether it inspires the confidence of the court or not; and whether necessary particulars explaining the delay have been given or not. All the facts and circumstances have to be carefully considered. Where it appears that the party is grossly negligent and where there is inaction on the part of the said party and where there are no bonafides, the delay cannot be condoned, however short it may be.”

11. According to the second judgment referred above, when substantial claims are involved in the suit, parties must be more diligent in prosecuting the proceedings. But, merely because substantial rights are involved, Court cannot exercise its discretionary power on mere asking without showing sufficient cause for the delay occurred is beyond control of the petitioner. Therefore, I find no ground to condone abnormal delay of 754 days and consequently the revision is liable to be dismissed.

12. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the present revision, stand closed.

M. SATYANARAYANA MURTHY, J

October 26, 2018

Mgr