

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

**CIVIL REVISION PETITION No.5921 of 2016**

**ORDER:**

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, is filed to revise the Order dt. 30.09.2016 in I.A.No.364 of 2015 in unnumbered Appeal Suit passed by III Additional District Judge, Tirupathi, dismissing an application filed under Order XLI Rule 3A of CPC to condone delay of 1130 days in preferring the appeal.

The petitioner/D.2 filed petition under Order XII Rule 3A CPC to condone delay of 1130 days in filing appeal on the ground that he is not aware that the decree can be challenged by way of appeal within stipulated period and as he was unwell, he could not contact his counsel in time to give instructions or to proceed further in the matter. But, on receipt of Notice in I.A.No.135 of 2012, he approached the counsel, who in turn took necessary instructions to prepare Counter in the petition. Thus, there is delay in preferring an appeal and requested this Court to condone delay of 1130 days in filing the appeal.

The respondent/plaintiff filed Counter denying the material allegations *inter alia* contending that it is the duty of the petitioner to file appeal, if he wishes, and that ignorance of law is not an excusable ground to condone delay. The other contention is that the ground of illness for such a prolonged period of 1130 days is not supported by any material evidence and it was invented for filing the present petition and prayed to dismiss the petition.

The respondent/plaintiff filed suit for specific performance and the suit was decreed on 16.11.2011. Against which, the present appeal was

filed with a petition to condone delay of 1130 days in preferring an appeal on two grounds:

“First ground is that the petitioner is not aware that decree can be challenged by way of appeal and second ground is that due to ill-health, he could not contact his counsel to give instructions to proceed further in the matter”.

The first ground is based on ignorance of law. It is settled law that ignorance of law is not an excuse and on the ground that he is not aware that decree can be challenged by way of appeal, the petition, which is filed for condonation of delay of 1130 days in preferring the appeal, cannot be set aside.

The other ground urged before this Court is that the petitioner was not well and thereby he could not contact the counsel to give necessary instructions to proceed further in the matter. The entire affidavit is silent as to when he suffered from illness and whether such illness totally prevented him from moving from the house to contact his advocate and nature of illness also. If really, the petitioner had suffered such prolonged illness for 1130 days, he would have treated in any hospital by a competent doctor and the said fact must be supported by any document. But, no such details are available whether such illness totally prevented him from moving from the house to contact his advocate. Therefore, based on bald allegations, abnormal delay of 1130 days in preferring the appeal cannot be condoned.

While deciding an application filed under Section 5 of Limitation Act, the Court has to construe the cause liberally without adopting pedantic approach. If a sufficient cause is shown, the Court can exercise its discretion liberally to condone delay. Here, the first cause

shown is ignorance of law and it is not an excuse as discussed above. The second cause shown by the petitioner is illness. The prolonged illness of 1130 days is not supported by any material. On the concept of liberal approach, when the reason assigned in the affidavit filed along with the petition does not disclose sufficient cause, which means a cause beyond the control of the petitioner, the Court cannot exercise its discretion to condone abnormal delay of 1130 days as it would amount to jettisoning the substantive law of limitation.

In *Lanka Venkateswarlu (died) By Lrs v. State of AP*<sup>1</sup>, the Apex Court expressed its displeasure in para No.26 of the Judgment for condoning delay on the concept of liberal approach, justice oriented approach and substantial approach, 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" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay”.

Though the limitation harshly affects the rights of the parties, the Court is obligated to implement the law of limitation in its letter and spirit, as held by the Apex Court in *P.K. Ramachandran v. State of Kerala and another*<sup>2</sup>.

In view of the law declared by the Apex Court discussed above, the two grounds raised by the petitioner for condoning abnormal delay of 1130 days is not based on any material and thereby I find no ground to condone abnormal delay of 1130 days in filing the appeal exercising power under Section XLI Rule 3A of CPC. The trial Court rightly dismissed the petition refusing to condone delay of 1130 days in filing appeal and it does not call for any interference by this Court in exercising power

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

<sup>2</sup> AIR 1998 SC 2276

under Section 115 of CPC, which permits this court to interfere with the findings of the Court, which are under control of High Court, if the trial Court failed to exercise its jurisdiction that conferred on it or exercised jurisdiction that is not vested on it or exercised the jurisdiction illegally or irregularly. But, in the present case, none of the grounds were raised and established and therefore, I am not inclined to interfere with the Order dt. 30.09.2016 In I.A.No.364 of 2015 in unnumbered Appeal Suit passed by III Additional District Judge, Tirupathi, as it lacks merit and it is liable to be dismissed.

Accordingly, this Civil Revision Petition is dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.



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**M. SATYANARAYANA MURTHY, J**

Date: 19-02-2018  
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**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

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Dt. 19-02-2018

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