

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1004 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order dt. 07.11.2015 In I.A.No.386 of 2015 in O.S.No.230 of 2012 on the file of Principal Junior Civil Judge at Amalapuram, allowing an application filed under Section 5 of Limitation Act condoning delay of 425 days in filing a petition filed under Order IX Rule 13 CPC.

The respondents herein/defendants filed Petition under Section 5 of Limitation Act along with a Petition Order IX Rule 13 CPC, alleging that after receipt of the summons in the suit, they appointed Sri B.J.S.Diwakar, Advocate, Rajahmundry, to contest the suit on their behalf and gave instructions to file Written Statement, but their counsel informed that they will be called over mobile phone whenever their presence is necessary. In the month of February, 2015, they received summons in EP.No.29 of 2015 pertaining to the suit and then only they came to know that the suit was decreed *ex parte* and this fact was informed to the counsel, who intum informed that due to busy activities in Bar Association as President and due to strike for Samikyandhara and due to death of his father, he was unable to look after the matter and they obtained 'No Objection Certificate' from him and engaged another advocate in the execution petition and gave instructions to him to prepare Counter in EP and to file necessary applications in the suit to set aside the *ex parte* decree dt.07.11.2015. Unfortunately, the said counsel also did not prepare the same in time and as such, they changed their counsel again and appointed the present counsel to look after the proceedings and finally they filed the present petition under Section 5 of Limitation Act along with a Petition under Order IX Rule 13 CPC to condone delay and to set

aside the *ex parte* decree passed on 03.02.2014 and that there are no latches on their part in filing the petition to condone delay and prayed to allow the petition condoning delay of 425 days in filing the petition Under Order IX Rule 13 CPC.

The petitioners herein/plaintiffs filed Counter denying the material allegations *inter alia* contending that the respondents/defendants engaged the counsel as admitted in the petition, but did not file Written Statement and later the factum of passing of decree for specific performance dt. 03.02.2014 was informed to them by Notice dt. 24.02.2014 and the respondents herein gave reply on 24.03.2014 intimating that they are going to take steps to get the *ex parte* decree set aside and therefore, the alleged knowledge from the date of receipt of notice in the execution petition is false on the face of the record and prayed to dismiss the petition.

Upon hearing both counsel, the trial Court allowed the petition on the ground that the Court has to adopt justice oriented approach and liberal approach while deciding an application filed under Section 5 of Limitation Act and observed that there was Samaikyanadha agitation for almost 6 to 8 months and the Advocates in Andhra Pradesh were participated in such activity of Samaikyanadha agitation and that the cause shown by the petitioners is sufficient cause and condoned delay of 425 days in filing the petition under Order IX Rule 13 CPC.

It is a strange case where the respondents herein/defendants admitted that they engaged the counsel to contest the suit, but the counsel failed to file Written Statement for one reason or the other including his busy activities being the President of Rajahmundry and due to demise of his father during the said period. It appears that though his father died, he was busy with the activities of the Bar ignoring

the ceremonial functions on account of death of his father and it appears to be most artificial disowned his responsibilities towards the client. However, it is evident from the record that the Notice Dt. 24.02.2014 was issued by the petitioners herein/plaintiffs before the trial Court intimating about passing of *ex parte* decree dt. 03.02.2014 in O.S.No.230 of 2012 and the respondents herein/defendants promptly replied to the said notice informing that they are going to take appropriate steps to set aside the *ex parte* decree and requested not to take coercive steps. Thus, on the date when the Notice dt. 24.02.2014 was received, they got knowledge about passing of an *ex parte* decree and issuing reply itself is suffice to attribute knowledge about passing of a decree *ex parte*, but leisurely, the defendants approached the Court after 14 months from the date of passing *ex parte* decree, though they acquired knowledge within half a month from the date of passing decree, on the lame excuse that they came to know about passing of decree only when they received notice in EP No.29 of 2015 and when the reply was issued requesting the petitioners herein/plaintiffs not to take coercive steps as they are taking steps to get the *ex parte* decree set aside, the allegation that they came to know about the passing of *ex parte* decree on the date when they received summons in the Execution Petition is false on the face of the record and hence on that ground, the delay cannot be condoned. The trial Court made certain observations in the Order that the Court has to adopt justice oriented approach and liberal approach in deciding the application filed under Section 5 of Limitation Act. But, this view is contrary to the principle laid down by the Apex Court in *Lanka Venkateswarlu (died) By Lrs v. State of AP*¹, wherein the Apex Court expressed its displeasure in para No.26 of the Judgment

¹ AIR 2011 SC 1199

for condoning delay on the concept of liberal approach, justice oriented approach and substantial justice, 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*².

In view of the law declared by the Apex Court, it is evident that the respondents herein had knowledge about passing of *ex parte* decree on the date when they received notice dt.24.02.2014 and they ought not to have waited for a period of nearly one year and filing of petition leisurely at their whim cannot be permitted. Therefore, the cause shown by the petitioners is not sufficient cause and on the other hand, it is false on the face of the record. Consequently, the Order dt.07.11.2015 passed by the trial Court is erroneous and it is liable to be set aside.

Accordingly, this Civil Revision Petition is allowed setting aside the Order Dt. 07.11.2015 in I.A.No.386 of 2015 in O.S.No.230 of 2012 on the file of Principal Junior Civil Judge, Amalapuram. No costs.

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

M. SATYANARAYANA MURTHY, J

Date: 15-02-2018

² AIR 1998 SC 2276

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