

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4491 of 2018

ORDER:

1) Aggrieved by the order, dated 26.09.2017, passed in I.A.No.159 of 2016 in M.O.P.No.919 of 2014 on the file of the X Additional District and Sessions Judge, Visakhapatnam at Anakapalle, wherein and whereunder a petition filed under Section 5 of Limitation Act to condone the delay of 239 days to file an application to restore M.O.P.No.919 of 2014, which was dismissed for default on 24.02.2015, was dismissed, the present Civil Revision Petition is filed by the plaintiff under Section 115 of C.P.C.

2) The facts in issue are as under:

The petitioner herein filed M.O.P.No.919 of 2014 against the respondents claiming compensation for the injuries sustained by her in a motor vehicle accident that occurred on 30.06.2012. On 24.02.2015, 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 due to ill health of the petitioner and as he was confined to bed for about eight months, could not contact his counsel and could not present in Court on that day. On coming to know about the dismissal,

the petitioner 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 239 days.

1) A counter came to be filed by the insurance company stating that the petitioner 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 petitioner preferred the present Civil Revision Petition.

2) 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) It is true that there is delay of 239 days in filing the petition but at the same time, the circumstances under which the said delay has occurred also needs to be considered.

4) The issue that arises for consideration is whether the delay of 239 days in filing a petition to set aside the dismissal order in M.O.P.No.919 of 2014 can be condoned.

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 to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being

¹ (2000) 3 SCC 54

² (2000) 9 SCC 94

³ (1987) 111 JLR 500 SC

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 clear from the material on record that the petitioner failed to file the restoration petition only due to his ill health. Further 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) Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs.

10) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

21.12.2018
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