THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.2105 of 2017

ORDER

This revision under Article 227 of the Constitution of India is filed challenging the order dated 27.03.2017 passed in I.A.No.3890 of 2011 in CMA (SR) No.12711 of 2011 by the Chief Judge, City Civil Court, Hyderabad, condoning delay of 2326 days in preferring the C.M.A., on payment of costs of Rs.2,000/- to be paid to the District Legal Services Authority, City Civil Court, Hyderabad.

2. The first respondent herein filed I.A.No.3890 of 2011 under Section 5 of Limitation Act through Mohammed Azmathullah Khan, GPA holder, to condone delay of 2326 days in filing the civil miscellaneous appeal against the order dated 31.10.2003 passed by the trial Court in I.A.No.113 of 2003 in O.S.No.1035 of 1996. It is stated that she filed the suit for declaration and recovery of possession together with mesne profits. The said suit was dismissed for default on 07.01.2003. As the petitioner, the first respondent, was staying in UAE, she filed I.A.No.113 of 2003 under Order IX Rule 9 of CPC, though GPA holder, to restore the suit by setting aside the order of dismissal for default and that the GPA in that case informed that he would take care of the suit. Subsequently, the said I.A. was also dismissed on 31.10.2003. The petitioner came to India in the month of June 2011 and came to know about the dismissal of I.A.No.113 of 2003. Immediately, she cancelled the said GPA and executed fresh GPA in her favour and the copy of the same is placed along with the petition.

3. It is the specific case of petitioner before the Court below that she purchased the suit schedule property under registered sale deed dated 15.09.1996 and in fact, she came to India on 21.06.1990 and left India on 20.09.1996. On 20.09.1990, she permitted the first respondent/defendant, petitioner herein, who is her own brother, to stay in the suit schedule property as permissive possessor and asked him to collect the original sale deed of the suit property from the Sub-Registrar's Office, Chikkadpally and to keep it in his safe custody. But, he took undue advantage of existing of original sale deed and in her absence, he fabricated a document claiming ownership of the suit schedule property. She came to know about the said fact through her another brother and immediately, she sent a Special Power of Attorney, it was attested by Consulate General of India at Dubai on 15.05.1995 to take proper steps and when the said GPA went to the property on 13.08.1996, to his utter surprise, found that defendant No.2 is also in possession of some portion of the suit property, as such, the petitioner filed the suit. But, due to dereliction on the part of her counsel and the power of attorney, the said suit was dismissed for default on 07.01.2003 and on coming to know about the dismissal of the suit, she filed I.A.No.113 of 2003 to restore the suit by setting aside the order of dismissal passed by the trial Court.

4. The first respondent, petitioner herein, filed counter denying the material allegations, *inter alia*, contending that the petitioner did not explain day-to-day delay and that the petitioner, who is his sister, had executed a registered deed in his favour vide document

No.1501 of 1994, but the GPA created ill feelings between him and the petitioner and filed a false suit. He contended that he also executed registered sale deed in favour of respondent No.2 on 19.05.1995 vide document No.1771 of 1995 and respondent No.2 became the absolute owner and possessor of the suit schedule property and that there are absolutely no reasons much less sufficient cause to set aside the dismissal order for default. It is further stated in the counter that respondent No.2 is the absolute owner and possessor of the suit schedule property in pursuance of the registered sale deed executed by respondent No.1. After dismissal of the suit on 07.01.2003, the petitioner filed I.A.No.113 of 2003 and the same was dismissed on 31.10.2003. The petitioner also filed I.A.No.3890 of 2011 to condone delay of 2326 days in filling the civil miscellaneous appeal. Though she has got knowledge about the dismissal of the order passed in I.A.No.113 of 2003 dated 31.10.2003, she has not preferred any appeal within the stipulated time. She also filed a criminal case against the respondents and others in Cr.No.72 of 2003 dated 06.03.2003, which is another strong circumstance to establish that the petitioner is aware of the dismissal order and therefore, she cannot now contend that she has no knowledge about the dismissal of the petition and prayed to dismiss the petition.

5. Upon hearing argument of both the counsel, the trial court placed reliance on the judgment of Apex Court in **N. Balakrishnan V. M. Krishnamurthy**[1] and this Court in **M. Yerrappa (died) by LRs V. Authorised Officer, Land Reforms Appellate Tribunal,**

[1] AIR 1998 SC 3222

Anantapur, Anantapur District[2]; **and Mohd Rafiuddin v. Amruthlal**[3]. The trial Court concluded that the cause shown by the petitioner is sufficient and condoned delay in filing the civil miscellaneous appeal against the orders passed in I.A.No.113 of 2003.

6. Aggrieved by the order passed by the trial Court, the respondents in the petition preferred the present revision under Article 227 of the Constitution of India, on the ground that the reason assigned by the petitioner/first respondent is not sufficient which prevented her from filing a petition within time and the cause shown by her is not beyond her control. But the Court below allowed the petition condoning the abnormal delay of 2326 days in filing the appeal and committed error.

7. During hearing, learned counsel for petitioners has placed reliance on several judgments reported in **Basawaraj and another v. Special Land Acquisition Officer**[4]; **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai**[5]; **Balwant Singh (dead) v. Jagdish Singh and others**[6]; **Lanka Venkateswarlu (dead) by LRs., v. State of Andhra Pradesh and others**[7]; and **Binod Bihari Singh v. Union of India**[8]. In all these judgments, the Apex Court laid down certain guidelines to be followed by the Courts while exercising jurisdiction under Section 5 of Limitation Act to condone

---

[2] 2012 (4) ALD 124
[3] 2012(2) ALD 316
[4] 2014(1) ALD 33 (SC)
[5] 2012(4) ALD 35 (SC)
[6] AIR 2010 SC 3043
[7] (2011) 4 SCC 363
[8] (1993) 1 SCC 572

delay. The counsel for petitioners, on the strength of those judgments and while reiterating the grounds urged in the petition, requested this Court to allow the revision setting aside the order passed by the District Judge in I.A.No.3890 of 2011 in CMA (SR) No.12711 of 2011.

8. Whereas the counsel for the first respondent mainly contended that when the first respondent was out of the country, no knowledge attributable to her and apart from that she has executed general power of attorney and that she also lodged a complaint against the counsel on record appeared before the trial Court with the Bar Council of Andhra Pradesh to take necessary action. In such case, the delay can be condoned holding that the first respondent was prevented by sufficient cause which is beyond her reasonable control and therefore, the Court below has rightly exercised its discretion under Section 5 of Limitation Act. He placed reliance on the judgment of the Apex Court in **N. Balakrishnan's** case, referred supra.

9. Considering the rival contentions of the parties and perusal of the material on record, the point that arises for consideration is:

> "***Whether the first respondent was prevented by any cause which is beyond her control in filing a petition under Order IX Rule 13 of CPC, if so, the order passed by the Court below in I.A.No.3890 of 2011 in CMA (SR) No.12711 of 2011 be sustained?***

10. **Point:**

The main reason for seeking the relief to condone delay of 2326 days is that the first respondent filed the suit through GPA holder and entrusted the matter to the counsel, but the counsel and the GPA did not prosecute the suit and another brother passed on information to the first respondent about the dismissal of the suit, and even after dismissal of the suit for default, they did not inform the same to her and moreover, on coming to know about the dismissal of the suit due to negligence in prosecuting the proceedings by the counsel and GPA, she lodged a complaint with the Bar Counsel of Andhra Pradesh to take necessary action against the counsel on record before the Court below for dereliction of his duties. But she came to know about this order passed by the Court below only when she returned to India.

11. The petitioners herein denied the same on the ground that the first respondent came to India in the year 2003 and on the complaint lodged by her, a case in Cr.No.72 of 2003 was registered against the first petitioner and others on 06.03.2003 and it is pending for investigation by the date of filing the petition. When she was out of the country and had no knowledge about the proceedings, the question of lodging a report with the police does not arise and that the registration of Cr.No.72 of 2003 against the first petitioner herein itself is suffice to conclude that she came to India in the year 2003, more particularly on 06.03.2003. The petition was filed before the Court in the month of April, 2011. But the suit was dismissed long prior to registration of Cr.No.72 of 2003 dated 06.03.2003 against

the first petitioner herein. This itself is falsifies the contention of the first respondent that she was away from the country and staying at Dubai and not aware of dismissal order, passed by the Court below. The first respondent did not offer any explanation as to how she lodged the report with the police and the police registered a case in Cr.No.72 of 2003. Therefore, the plea raised by the first respondent is proved to be false.

12. The first respondent had prosecuted the proceedings for some time through GPA holder and when the suit was dismissed on 07.01.2003, she filed I.A.No.113 of 2003, which was also dismissed on 31.10.2003, but she did not prefer any appeal within the time. Conveniently, a civil miscellaneous appeal was preferred in the year 2011 with a petition to condone delay of 2326 days in filing the appeal. The only reason assigned by her is that she was out of the country and residing at Dubai. But that fact is not supported by any material and on the other hand, her visit to India in the month of March, 2003 would suffice to conclude that she was visiting India frequently. When she filed I.A.No.113 of 2003, which ended in dismissal on 31.10.2003, she would have preferred appeal within limitation. She came to India and lodged a report with the police on 06.03.2003, i.e., almost within three months from the date of dismissal of the suit. This itself suffice that the petitioner was visiting India frequently, but she did not raise her little finger to prefer the civil miscellaneous appeal against the order passed by the Court below.

13. The main contention urged before this Court is that when the counsel did not inform about the order passed by the Court in I.A.No.113 of 2003, and when the first respondent was available in India and lodged a report with the police, it is her duty to take necessary precautions to know the details of the orders passed by the Court below. Though the duty is caste upon the counsel, she cannot disown her responsibility to know the date of the order passed by the trial Court. The counsel for the first respondent placed reliance on the judgment of the Apex Court in **N. Balakrishnan's** case referred supra, where an appeal was preferred with delay of 883 days in filing an appeal assigning reason that the Advocate on record did not inform about the result of the suit and his failure to take necessary action is sufficient ground to set aside the order passed by the Court and condone delay of 883 days in filing the revision.

14. As per the material on record, including the admitted pleadings, the first respondent was in India on 06.03.2003 and lodged a report with the police and the same was registered as Cr.No.72 of 2003, but still she did not evince any interest to know the result of the suit, but blamed that the counsel did not inform about the date of dismissal of I.A.No.113 of 2003. Therefore, she approached the Court with a petition to condone delay of 2326 days in filing an appeal throwing blame or passing bug to the counsel, disowning her responsibility to find out the result of the petition, she filed. On the other hand, the petitioner allowed the trial Court to dismiss the suit earlier and filed a petition to set aside the same in

I.A.No.113 of 2003, which ended in dismissal, against which, she filed an appeal with a petition to condone abnormal delay of 2326 days on the ground that she was out of India, but that by itself is not sufficient in view of the discussion in the earlier paragraphs.

15. The counsel for petitioners mainly contended that when a false plea was taken by the party to condone the delay, the Court cannot condone the delay and the Court shall not encourage such pleas as held by the Apex Court in **Binod Bihari Singh's** case, referred supra, where no sufficient cause for condonation of delay under Section 5 of Limitation Act is made out, but based on a false allegation, the first respondent's counsel sought for condonation of delay in filing an appeal. But the Apex Court made it clear that the Court cannot encourage such unfair practice in the name of defeating a just claim and held that it may not be desirable for the government or the public authority to take shelter under the plea of limitation to defeat a just claim of a citizen. But if a claim is barred by limitation and such plea is raised specifically, the Court cannot straightaway dismiss the plea simply on the score that such plea is ignorable. A bar of limitation may be considered even if such plea has not been specifically raised.

16. In another judgment of the Apex Court in **Lanka Venkateswarlu's** case, referred supra, the Apex Court heavily laid on the practice of allowing petitions in a routine manner while observing that the Courts in this country, including the Supreme Court, adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section

5 of the Limitation Act. However, the concepts, such as, 'liberal approach', 'justice oriented approach', 'substantial justice' cannot be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. 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. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally".

17. In the facts of the above judgment, no sufficient cause was made out and the High Court agreed that no cause was shown which prevented the petitioner from filing an appeal within limitation, but still the Court ordered the petition. In those circumstances, the Apex Court made such serious observations against this Court when this Court liberally condoned the delay in filing an appeal and setting aside the orders passed by the single Judge of this Court.

18. Similarly, in **Balwant Singh's** case, referred supra, an identical question regarding liberal approach of the Courts came up for consideration and the Apex Court held that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, has Accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

19. A similar view was expressed in the later judgment in **Maniben Devraj Shah's** case, referred supra, the Apex Court held that to condone the delay under Section 5 of Limitation Act, sufficient cause must be shown and determination of sufficient cause depends

upon the facts of each case. Though a liberal and justice oriented approach is required to be adopted, Courts cannot become oblivious of fact that successful litigant has acquired certain rights on basis of litigation apart from cost. Hence, what colour expression 'sufficient cause' would get in factual matrix of a given case would largely depend on bonafide nature of explanation.

20. Subsequently, in **Basawaraj's** case, referred supra, the apex Court held that condonation of delay without considering the most relevant factor i.e., 'sufficient cause' only on the condition that applicants would be deprived of interest for the delay period, cannot be approved. The law on the issue can be summarised to the effect that where a case has been presented in the Court beyond limitation, the applicant has to explain the Court as to what was the 'sufficient cause' which means an adequate and enough reason which prevented him to approach the Court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone delay. No Court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory

provisions and it tantamounts to showing utter disregard to the legislature.

21. In view of the law declared in the above judgments, the expression ‘sufficient cause’ should be given liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bonafides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. Thus, in view of the settled legal position that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same.

22. Therefore, the reason assigned by the first respondent that she would not have informed about the dismissal of I.A.No.113 of 2003 by the counsel though she was visiting India frequently as she lodged a report with the police on 06.03.2003, which was registered as Cr.No.72 of 2003, is suffice to conclude that she did not approach the Court with clean hands while claiming discretionary relief under Section 5 of Limitation Act. The total sheer negligence in prosecuting the proceedings of the first respondent either by her counsel or her GPA holder would disclose that they failed to

prosecute the proceedings diligently and at every stage, she was negligent in prosecuting the proceedings. Therefore, the cause shown by the first respondent is not beyond her control and the parties cannot be allowed to approach the Court whenever they wishes by creating one or two grounds, which allegedly prevented them from filing an appeal invoking Section 5 of Limitation Act. If the Courts are allowed to encourage such practice, it is difficult to put an end to the litigation and it is against the spirit of Limitation Act since the Limitation Act was adopted as a matter of public policy. Therefore, the order passed by the Court below holding that the cause shown by the first respondent is sufficient which prevented her from filing an appeal within the time, is not based on any material and on the other hand, the material produced before the Court made me to disbelieve the contention that she was prevented by sufficient cause, on the other hand, on account of long delay of 2326 days, the petitioner would acquire or create rights in the property. In such case, petition cannot be allowed.

23. In the result, the Civil Revision Petition is allowed, setting aside the order passed by the Court below while dismissing I.A.No.3890 of 2011 in CMA SR No.12711 of 2011 dated 27.03.2017.

24. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

22nd February, 2018
sj