

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.5488 and 5494 of 2018

COMMON ORDER:

1) C.R.P.No.5488 of 2018 is filed, aggrieved by the order dated 10.09.2018 passed in I.A.No.218 of 2018 in S.O.P.No.202 of 2012 on the file of the Special Judge for trial of Cases under SCs & STs (POA) Act-cum-X Additional District and Sessions Judge, East Godavari at Rajahmundry, wherein an application filed under Order 9 Rule 9 of C.P.C. to set aside the dismissal order dated 02.01.2018 was allowed.

2) C.R.P.No.5494 of 2018 is filed, aggrieved by the order dated 10.09.2018 passed in I.A.No.216 of 2018 in S.O.P.No.202 of 2012 on the file of the Special Judge for trial of Cases under SCs & STs (POA) Act-cum-X Additional District and Sessions Judge, East Godavari at Rajahmundry, wherein an application filed under Section 5 of Limitation Act to condone the delay of 20 days in filing a petition to set aside the dismissal order was allowed.

3) Since the issue involved in both the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected they are being disposed of by this common order.

4) For the sake of convenience the parties herein after referred to as arrayed before the trial Court.

5) The facts in issue are as under:

The first respondent along with respondents 10 to 12 herein filed Society O.P.No.202 of 2012 seeking the following reliefs:-

a) for declaration of resolution dated 05.09.2005 passed by the Special General Body, amending the articles of association by filling up vacancy in the Executive Committee through induction of any other member in the place of the member belonging to Christian Minority Community, is fabricated, untrue and illegal,

b) and to declare that the resolution dated 01.08.2007 in Special Executive Committee accepting the alleged resignation of the petitioners and consequent cessation of petitioners to be members of executive committee of the 1st respondent society is also fabricated, illegal and untrue;

c) to render account of the society, 1st respondent since the time of financial year 2007 onwards till date;

d) for dissolution or winding up of the 1st respondent society. But the said petition was dismissed for default on 02.01.2018.

6) When the said S.O.P. was posted for cross-examination of RW.1, the petitioners in S.O.P. failed to appear before the Court. As such the trial Court dismissed the said S.O.P.

for default on 02.01.2018. Subsequently, the 1st respondent herein filed the present petitions ie. for condoning the delay in filing the petition and to restore the O.P. to its original stage.

7) The third respondent in S.O.P. filed counter contending that the petitioners in S.O.P. were negligent in prosecuting the matter. It is pleaded that even on previous occasions, they failed to appear before the trial Court and that the petitioner failed to explain day to day delay.

8) After considering the material on record, the trial Court allowed both the petitions. Aggrieved by the same, the present revision petitions are filed.

9) Learned counsel for the petitioner herein would submit that no valid reasons are assigned to condone the delay and no proof is filed.

10) A perusal of the affidavit filed in support of I.A. would show that the petitioner was in the custody of Razole Police and due to said reason, he could not prosecute the matter on 02.01.2018 and that there was no negligence on his part.

11) In *State of Bihar and others v. Kameshwar Prasad Singh and another*¹ the Apex Court held as under:

¹ (2000) 9 SCC 94

“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*² 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 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:

- a. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
- b. 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.
- c. ‘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.
- d. 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.
- e. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence,

² (1987) ILLJ, 500 SC

or on account of *mala fides*. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

- f. 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.”

12) From the judgment 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 being 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.

13) In the instant case the main ground urged by the petitioner is that, on the date of cross-examination of RW.1, he could not appear before the Court as he was in the custody of police and after his release, he filed the present petitions. The said explanation cannot be brushed aside having regard to the circumstances of the case and the trial Court has rightly accepted the said explanation. Hence, I see no merits in the revisions.

14) Accordingly, both the Civil Revision Petitions are dismissed.

15) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

20.09.2018
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