

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.986 OF 2012

ORDER:

Heard Mr.Ramatirtha for petitioner and Mr.Durga Prasad & Mr.Gopal for respondents.

The defendant in O.S.No.225 of 2009 in the Court of Senior Civil Judge, Bhimavaram is the revision petitioner.

The 1st respondent filed O.S. No.225 of 2009 for recovery of suit amount based on promissory note dated 11.09.2008.

On 27.10.2009, the defendant/revision petitioner was set aside and the suit was also decreed on the same day. The revision petitioner filed I.A. No. 102 of 2010 on 11.12.2009 to condone 15 days delay in filing application to set aside the decree dated 27.10.2009.

The revision petitioner stated the cause for not filing the application within time as the revision petitioner was suffering from typhoid and could not attend the Court or file written statement. Now, it is stated the revision petitioner has attached the written statement along with the instant application.

The 1st respondent joins issue with the revision petitioner on the cause shown by the revision petitioner for not attending the Court on 27.10.2009.

The learned trial Judge through the order impugned in the CRP held that the revision petitioner did not file evidence in support of his assertion that he was suffering from typhoid. Hence, the CRP.

Mr. Ramatirtha contends that the Court below has taken a hyper technical and pedantic view in appreciating more or less a timely application made by the revision petitioner for setting aside the exparte order dated 27.10.2009. He further submits that the reason stated is not that the revision petitioner was hospitalized, but was suffering from typhoid which can also be treated as out-patient. He further contends that the trial Court has not considered the matter with practical approach to further the ends of justice. Therefore, the revision petitioner is subjected to prejudice. He places strong reliance on the decision of the Apex Court in Balwanth Singh (dead) v. Jagdish Singh¹ which reads thus:

"22. The concepts of liberal approach and reasonableness in exercise of the discretion by the Courts in condoning delay, have been again stated by this Court in the case of Balwant Singh (supra), as follows:-

"25. We may state 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 party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation." "

"26. The law of limitation is a substantive law and has definite consequences on the right and obligation of 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

¹ (2010) 8 SCC 685

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."

23. Let us now examine as to whether the High Court was justified in condoning the delay in the peculiar facts of the presence case. The High Court in its judgment records the following conclusions:-

"(1) The Government Pleader having filed the appeal on 18.2.1983 has taken three long years to get the appeal numbered.

(2) The sole respondent died in 1990. The learned counsel for the respondent submits that he served a letter on the learned Government Pleader bringing to his notice about the death of his client in 1990 itself. Since the letter is not traced we are not giving much importance to that fact. But at the same time this fact was brought to the notice of the Government Pleader on 24.2.1997 when the appeal was listed for hearing.

(3) Even though the Court gave sufficient time the Government Pleader has not taken any steps to bring LR's. on record.

(4) After one year the Court passed a Conditional Order on 6.2.1998 and the appeal was dismissed for not bringing the LR's. on record.

(5) After two more years the concerned officials of the Government and the Government Pleader in office at the relevant point of time, filed some applications, which are not in order.

(6) Even then they have not bestowed any attention either to comply with the defects in filing the application or in getting the orders are passed on these applications.

But at the same time they went on taking time without knowing for what purpose they were taking time.

In the result an appeal which would have been disposed of in 1997 remained pending all these years mainly due to the negligence on the part of the Government Pleader in office.

Thereafter at the two stages, the High Court records that:-

"In the normal course we would have thrown out these applications without having second thought in the matter....."

"We have already observed that in the normal course we would have dismissed the applications for severe latches on the part of the appellants and their counsel."

and contends that the delay ought to have been condoned.

The 1st respondent opposes and submits that there is purpose in insisting upon giving the reasons for not being present on the adjourned date and the affidavit of the revision petitioner treats such requirement as completely non-existing requirement. It is further brought to the notice of the Court that in execution of the decree, the property has already been auctioned in favour of 2nd respondent, but the sale is not yet confirmed.

I have perused the record and also the ratio laid down by the Apex Court in Balwanth Singh case (supra). Prima facie this Court is of the view that it cannot be held that in the case on hand, the revision petitioner has been procrastinating the trial or causing obstruction. The revision petitioner has also now appended the written statement along with the application to condone the delay. By taking note of the fact that written statement is now also filed

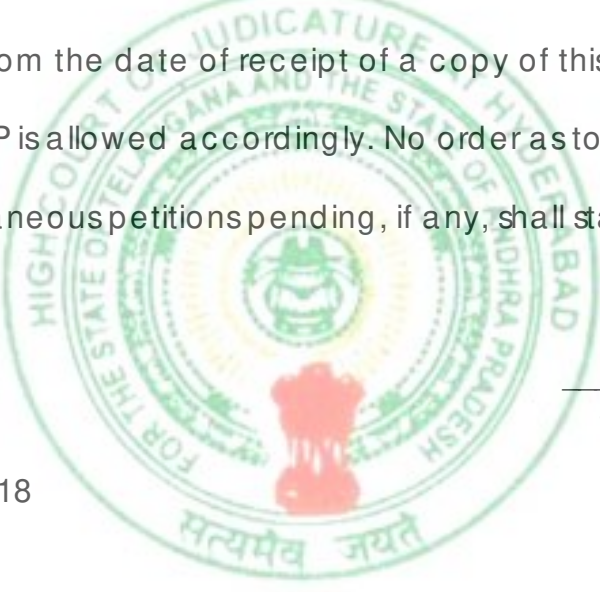
which was the reason for setting the revision petitioner ex parte, the Court ought to have exercised its discretion to further the ends of justice. This Court is of the view that, if delay is condoned, ends of justice would be met. On the other hand, if the revision is rejected, the revision petitioner would be subjected to ex parte orders and also denial of property in execution of such ex parte decree. For the above reasons, the order impugned in the CRP is set aside. The trial Court is directed to number the consequential application and also pass the appropriate orders keeping in view what is observed by this Court in this CRP. The suit is directed to be disposed of within two months from the date of receipt of a copy of this order.

The CRP is allowed accordingly. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Date: 05.09.2018

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S.V. BHATT, J