

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2554 of 2014

ORDER:

The civil revision petition is filed under Article 227 of the Constitution of India, challenging the order dated 21.04.2014 passed in I.A.No.624 of 2012 in O.S.No.23 of 2007 by the Senior Civil Judge, Piler, whereby the petition filed under Section 5 of Limitation Act to condone the delay of 463 days in filing the petition under Order XXII Rules 4 and 9 of Code of Civil Procedure (for short "C.P.C.") was dismissed.

Petitioners are the plaintiffs in the suit and they filed the suit for partition. During the pendency of the suit, defendant No.15 died on 20.12.2010 leaving behind him respondent Nos.34, 35 and 36 as his legal heirs to succeed his share in the property and they are required to be impleaded as defendant Nos.34, 35 and 36 in the main suit.

It is further contended that the petitioners received information from their counsel that they required to bring legal heirs of deceased defendant No.15 on record within 90 days from 20.12.2010 and that they were not brought on record within 90 days, thereby there is delay of 463 days in filing the petition under Order XXII Rules 4 and 9 of C.P.C., sought to condone delay of '463' days in filing the petition.

Defendant Nos.34, 35 and 36 filed counter and the defendant Nos.26 and 27 also filed counter, but the same was not signed by defendant Nos.26 and 27 or their counsel, as such the counter of

defendant Nos.26 and 27 was ignored by the Court below and other defendants did not file any counter.

Defendant Nos.34, 35 and 36 specifically contended that there was no whisper in the entire affidavit of the petitioners what prevented them in filing L.R. petition within time, each and every day of the delay also not explained properly, therefore, the abnormal delay of 463 days in filing the petition under Order 22 Rules 4 and 9 of C.P.C. cannot be condoned as petitioners are guilty of latches.

Upon hearing argument of both the counsel, the Court below dismissed the petition on the ground that absolutely no reason was shown by the petitioners as to why they could not file application in time and thus there is sheer negligence and latches on the part of the petitioners in prosecuting the case.

Aggrieved by the same, the present revision is filed contending that the main suit is filed for partition and in case the proposed parties are not impleaded, the claim itself will be rejected, and unless sufficient opportunity given to the petitioners, it is difficult for them to prosecute the case properly and prayed to condone the delay in filing application under Order XXII Rule 4 of C.P.C.

Learned counsel for the petitioners contended that the counsel for defendant No.15 did not comply with the requirement under C.P.C., thereby the petitioners are not aware about the death of defendant No.15, hence there is delay in filing the petition filed under Order 22 Rules 4 and 9 of C.P.C.

The suit is filed for partition of suit schedule property claiming their right in ancestral property as they are closely related to each

other by blood. When a close relative, who is coparcener along with the petitioner, died, the petitioners are expected to know the death of close relative despite pendency of suit. Even if this fact is ignored, limitation starts from the date of death of party to the suit as per Article 120 of Limitation Act and the limitation period is '90' days to bring the Legal representatives of the deceased. But the contention of the learned counsel for the petitioner that failure of the counsel for the defendant No.15 to comply with Order XXII Rule 10-A of C.P.C. is not a ground since it is only intended to enable the parties to know the details and addresses of the legal representatives of the deceased through counsel, but that does not mean that limitation starts from the date of such intimation.

In "***Syed Noor Mohammed v. Syed Khaja Moinuddin***"¹ this Court had an occasion to deal with Order XXII Rule 10-A of C.P.C. and held that non-filing of a memo about the death of party does not relieve a plaintiff or an appellant from adding legal representatives of a deceased party. Therefore, in view of the law declared by this Court failure to comply with the requirement under Order XXII Rule 10-A of C.P.C. is not at all a ground to condone the delay in filing the application under Order XXII Rules 4 and 9 of C.P.C. Even otherwise, the affidavit is bereft of any reason or sufficient cause, which prevented the petitioners from filing the petition within the stipulated time. The word 'sufficient cause' though required to be considered elaborately without adopting pedantic approach, still this Court on mere asking cannot allow the petition without explanation for the delay. Therefore, non-compliance of Order XXII Rule 10-A of C.P.C. is not a ground to condone the delay of 463 days in filing

¹ AIR 2008 AP 82

petition to implead legal representatives of deceased defendant No.15. Even assuming for a moment that no such information was furnished as required and the petitioners are unaware about the death of defendant No.15, it is for the petitioners to explain the reason as to what prevented them from filing the petition within time to claim benefit under Section 5 of Limitation Act.

In the present facts of the case, except making a bald allegation that the petitioners came to know through their counsel that legal representatives of deceased defendant No.15 have to be impleaded, no reason much less sufficient reason was assigned for their failure in filing the petition within the time and what prevented them from filing the petition within the time.

When sufficient cause is not shown, delay cannot be condoned in view of the law declared by the Supreme Court in “**Lanka Venkateswarlu (D) by L.Rs. v State of A.P. and Others**”² 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” 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. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any *lis* between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. 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

² (2011) 4 SCC 363

predilections cannot and should not form the basis of exercising discretionary powers.”

In “**Raj Kumar Bhatia v. Subhash Chander Bhatia**”³ the Full Bench of Apex Court held that in exercise of its jurisdiction Under Article 227 of Constitution of India, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order.

In view of the law declared by the Apex Court, the Courts cannot jettison substantive law of limitation on the concept of substantial justice or complete justice and set-aside the order accepting any cause shown by the petitioner as ‘sufficient cause’. Hence, the Trial Court did commit no error in passing the impugned order warranting interference of this Court by exercising power under Article 227 of Constitution of India. The civil revision petition is devoid of merits, consequently, the petition is liable to be dismissed.

In the result, the civil revision petition is dismissed. No costs.

The miscellaneous petitions pending in all the three revisions, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

23.02.2018
Ksp

³ (2018) 2 SCC 87