

**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**C.R.P.No.5922 of 2016**

**ORDER**

This petition is filed under Section 22 of the A.P. Buildings (Lease Rent and Eviction) Control Act challenging the order dated 24.03.2016 passed in I.A.No.915 of 2015 in R.A.No.234 of 2010 by the Chief Judge, City Small Causes Court, Hyderabad

The petitioner is the respondent before the Additional Rent Controller, Secunderabad.

The respondents filed petition for eviction of the petitioner and on contest, the eviction petition was allowed evicting the petitioner from the schedule premises and aggrieved by the said eviction order, the petitioner preferred R.A.No.234 of 2010 and it was dismissed for default on 30.09.2011. Since there was delay of 1439 days in filing the petition to get the order of dismissal, petition under Section 5 of the Limitation Act is filed to condone the said delay on the ground that the petitioner's earlier counsel Sri P.Gopalakrishna, who is pursuing the case informed her in case there is any progress, he would inform the same, but he did not inform the same. The petitioner also asserted that she suffered from paralytic stroke in the year 2011 and since then she is on bed, she could not pursue the matter. Therefore, prayed to condone the delay for restoration of the rent appeal.

The petition was opposed by the respondents on the ground that in the entire affidavit sufficient cause was not shown to condone the delay in filing the restoration petition and also failed to file any material that she suffered from paralytic stroke and bedridden after 2011 and requested to dismiss the petition.

The appellate Court dismissed the condonation petition holding that no material is produced to substantiate any of the contentions that the petitioner was prevented by sufficient cause, which is beyond his control. Aggrieved by the impugned order, the present revision petition is filed on various grounds mainly on the grounds referred in the affidavit and also raised contention that the property was notified under A.P. Slum Development Act and therefore, the Rent Controller has no jurisdiction and requested to set aside the impugned order.

It is an undisputed fact that the respondents filed petition for eviction of the petitioner in occupation of the property and it was allowed and aggrieved by the same, the petitioner preferred R.A.No.234 of 2010 and it was dismissed for default on 30.09.2011. Thereafter, the petitioner filed petition to condone the delay of 1439 days in filing the restoration petition for the reason that the earlier counsel did not inform about the progress in the case and that she suffered from paralytic stroke in the year 2011 and bedridden for substantially long period. If really, the petitioner suffered from paralytic stroke and she might have treated by the doctor and there must be some medical evidence, but no evidence is brought on record. Therefore, on this ground, the delay cannot be condoned.

The other ground urged before this Court that the petitioner's earlier counsel assured her that he will inform about the progress in the case, but he did not inform the same. Hence, she could not file the petition before the Court. The assurance given by the counsel is not a ground to condone the delay and it is for the petitioner to prosecute the proceedings diligently.

No doubt, word 'sufficient cause' used in Section 5 of the Limitation Act can be construed liberally and the length of delay is not the ground, but it is for the petitioner to prove that she was prevented by cause which is beyond reasonable control. What is sufficient cause depends upon various facts.

In the facts and circumstances of the case, the petitioner put forth two contentions. The first one is that the petitioner suffered from paralytic stroke and the second one is that she was not informed by her earlier counsel about the development in the proceedings pending before the Court, which does not arise in normal course. When appeal is pending before the Court, it is for the petitioner to prosecute the case with due diligence and when her counsel did not keep up his promise i.e. promise to inform progress in the appeal, it is for the petitioner to take necessary action, but that is not the ground to condone the abnormal delay of 1439 days. Therefore, the impugned order cannot be found fault.

Moreover, the Apex Court in **Lanka Venkateswarlu (D) by OL.Rs. v State of A.P. and others**<sup>1</sup> had an occasion to decide what is sufficient cause and powers of the Court to condone the delay and 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*

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<sup>1</sup> AIR 2011 SC 1199

*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 and fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.”*

If this principle is applied to the present facts of the case, this Court cannot exercise power to condone the delay when the Court finds that the petitioner was not prevented by sufficient cause.

Learned counsel for the petitioner at the end submitted that the building is situated in a notified area under A.P. Slum Improvement Act and W.A.No.152 of 2018 filed by the Government is pending before this Court. Pendency of writ appeal is not a ground to condone the delay since there was subsistence of jural relationship of landlord and tenant between the petitioner and the respondents as held by the Rent Controller, which attained finality. Hence, pendency of writ appeal is nothing to do with the revision petition and apart from that the possession of the property was already delivered in execution proceedings filed before the Court below as admitted by learned counsel for the petitioner and respondent on 22.10.2018.

In view of my foregoing discussion, I find no legal infirmity in the order under challenge in this revision, warranting interference of this Court since the power is limited under Section 22 of the A.P. Buildings

(Lease, Rent and Eviction) Control Act and consequently, the civil revision petition is liable to be dismissed.

In the result, the civil revision petition is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

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**M. SATYANARAYANA MURTHY, J**

24.10.2018  
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