

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5468 OF 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner - petitioner - defendant, challenging the order, dated 08.09.2017, in I.A. No.410 of 2015 in O.S. No.112 of 2011, passed by the learned III Additional Senior Civil Judge, Vijayawada, dismissing the application filed under Section 5 of the Limitation Act, 1963 (for short 'Act, 1963') to condone delay of 1480 days in filing the application to set aside *ex parte* decree passed against it.

2. The petitioner is M/s. Bharath Petroleum Corporation Limited, Mumbai, represented by its Power of Attorney Holder, Sri A. Siva Rama Krishna, Territory Manager, Vijayawada. The respondent herein filed the suit O.S. No.112 of 2011 for ejectment of the petitioner herein from the schedule property. The said suit was decreed *ex parte* by the trial Court, and this petitioner filed a petition under Order IX, Rule 13 of the Code of Civil Procedure, 1908 (for short 'Code') to set aside the *ex parte* decree along with petition to condone delay of 1480 days in filing the said application, alleging that the petitioner is being represented by its Power of Attorney Holder, Sri A. Siva Rama Krishna, Territory Manager, Vijayawada and the petitioner came to know about passing of an *ex parte* decree only on receipt of notice in delivery proceedings in Execution Petition filed

for execution of the decree in the said suit, and that the Power of Attorney Holder of the Company, which has its head office at Mumbai and Regional Office at Chennai, did not receive any notice, but the notice was sent to Chennai office instead of the petitioner's office at Vijayawada, intentionally to obtain an *ex parte* decree for ejectment of the petitioner from the schedule property.

i) It is the case of the petitioner that it installed valuable properties, like underground storage tanks, electric pumps, Canopy, Sales Building and Concrete flooring etc., spending huge amount. If the eviction is effected, it would hamper the activities of petitioner's company and that no opportunity to contest the suit was afforded and non-service of notice in the suit proceedings led to causing delay in filing the petition to set aside the *ex parte* decree under Order IX, Rule 13 of the Code with delay of 1480 days, and requested to condone delay of 1480 days as it is neither intentional nor wanton and requested to pass appropriate orders.

3. The respondent filed counter denying the material allegations, *inter alia*, contending that there is no sufficient cause for setting aside the *ex parte* decree or for condonation of abnormal delay of 1480 days, and in the absence of any sufficient cause, which prevented the petitioner herein from filing the petition within limitation, the petition cannot be allowed and sought to dismiss the petition at the threshold in *limini*.

4. Upon hearing argument of both counsel, the trial Court dismissed the petition on the ground that when summons were served on the Regional Office and the petitioner itself admitted about service of summons in the office at Chennai, but did not appear before the trial Court, the *ex parte* decree cannot be set aside and dismissed the petition.

5. Aggrieved by the order, the petitioner preferred the present revision under Article 227 of the Constitution of India, raising several contentions, mainly on the ground that an opportunity should be afforded when there were no laches on the part of this petitioner, but the trial Court did not consider the effect of passing such decree though the petitioner made out a case just only to condone the delay in filing the application which prevented it from filing such petition to set aside the *ex parte* decree under Order IX, Rule 13 of the Code, and committed a grave error in dismissing the petition and sought to set aside the order.

6. The respondent - plaintiff filed counter affidavit in the revision opposing the request.

7. During hearing, the learned counsel for the petitioner has mainly contended that when the lease was between the petitioner and the respondent, the respondent ought to have sent notice to the head office at Mumbai or territory office at Vijayawada as the agreement was entered into by the Territory Manager at Vijayawada being Power

of Attorney Holder, but the notice was ordered to the Regional Office at Chennai, which is unconcerned and, therefore, serving such notice is sufficient to conclude that no notice was served either on the petitioner's territory office at Vijayawada or at the head office at Mumbai. Therefore, on the ground of non-service of notice, delay can be condoned and requested to set aside the order passed by the trial Court. He also placed reliance on various judgments of Hon'ble Supreme Court in **Balwant Singh (dead) v. Jagdish Singh and others**¹, **Maniben Devraj Shah v. Municipal Corporation of Brihan, Mumbai**² and **State of U.P. through Executive Engineer and another v. Amarnath Yadav**³, and **Government of Andhra Pradesh, rep.by District Collector, Chittoor and another v. Kandriga Subba Reddy and others**⁴ rendered by a Division Bench of this Court. Based on the principles laid down in the above judgments, the learned counsel for the petitioner requested to condone delay of 1480 days in filing the petition to set aside the *ex parte* decree.

8. Whereas, the learned counsel for the respondent, Sri M. Karuna Sagar, opposed the petition on the ground that there are abnormal laches on the part of the petitioner in filing the petition and that the petitioner was not prevented by sufficient case which was beyond the control of petitioner, and in the absence of explanation for

¹. (2010) 8 SCC 685

². (2012) 5 SCC 157

³. (2014) 2 SCC 422

⁴. 2014 (1) ALT 631 (D.B.)

the abnormal delay, the petition is liable to be dismissed and prayed to dismiss the revision confirming the order passed by the trial Court.

9. A bare look at the allegations made in the affidavit filed along with the petition, the petition was filed by the Territory Manager of M/s. Bharat Petroleum Corporation Limited, Vijayawada, the petitioner herein, and the reason for filing the petition to condone delay of 1480 days is that no notice was served on the petitioner to appear before the Court and contest the suit, but only came to know about passing of *ex parte* decree after receipt of notice in Execution Petition on 31.05.2013 about the decree, dated 29.04.2011. The specific allegation made in paragraph No.4 of the affidavit in support of petition is relevant for deciding real controversy and it is extracted hereunder for better appreciation:

“4. I humbly submit that the Plaintiff knowing fully well that I am the Power of Attorney holder of the Defendant having it's Head Office at Mumbai and Regional Office at Chennai sent the above notice to Chennai instead of to me, intentionally to get Exparte Orders against us for delivery of Plaint Schedule Property and to get said Exparte Decree in the main suit.”

In paragraph No.10, it is asserted that the petitioner is a Public Sector Undertaking and that due to administrative procedures of communications, the petitioner could not know about the filing of the suit. Their Corporation was constituted under the Burma Shell Act, and the suit itself is bad for non-compliance of statutory procedures

and non-issuance of statutory notice. On this ground also, delay is to be condoned.

10. On overall consideration of allegations made in the affidavit along with petition, the cause for delay is sending notice to the Regional Office at Chennai without serving any notice at Territory Office at Vijayawada or at the Head Office at Mumbai. The suit was filed for ejectment of the petitioner from the schedule property and the lease was between Burma Shell Oil Storage and Distributing Company of India at Vijayawada represented by its Area Manager and the lease deed clearly shows that the Regional Office and Head office are not parties to the suit. Burma Shell Oil Storage and Distributing Company of India is not now in existence, but it was converted into Bharat Petroleum Corporation Limited, whereas the suit is filed only against M/s. Bharat Petroleum Corporation Limited and the address in the long cause title of the petition was mentioned as follows:

“Bharat Petroleum Corporation Limited, having Corporate office at 4 and 6, Currimbhoy Road, Ballard Estate, Mumbai – 400 001 and having its Regional Office at 1, Ranganathan Gardens, Off 11th Main Road, Anna Nagar, Post Bag No.1212 and 1213, Chennai – 600 040.”

Therefore, the notice was sent to the address mentioned in the long cause title of the plaint as the defendant is a Corporate Body. According to Section 20 of the Code, a Corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at anyplace where it has also a

subordinate office, at such place. This explanation to Section 20 of the Code is only for filing suit based on territorial jurisdiction, but service of notice on the Regional Office is sufficient as the regional office alone is party to the suit. If, for any reason, the Regional Office at Chennai is incompetent to contest the suit, the Regional Office ought to have appeared before the Court and contested the suit on the ground that the Regional office is not the proper and necessary party. Instead of contesting the suit, having received summons in the suit, maintained silence. Therefore, summons were served on the regional office of the company for one reason or the other, they did not contest the suit. Therefore, delay caused due to official procedures etc., is not a ground to condone the abnormal delay of 1480 days in filing the petition. It is an admitted fact that notice in execution petition was received on 31.05.2013 for delivery of property, but the petition was filed before the trial Court on 15.06.2015 i.e., almost after two years from the date of receipt of notice. What prevented the petitioner from filing the application within 30 days from the date of knowledge about passing of an *ex parte* decree for ejectment of the petitioner was not explained anywhere except making a bald allegation in paragraph No.10 of the affidavit that Defendant Corporation is a company public sector undertaking and due to administrative procedures, there was delay. But, that by itself is not a ground and, in fact, inordinate administrative delay was caused only on account of lethargic attitude of the employees in the company, and such inaction is described as 'red-tapism' by the Hon'ble Supreme Court in **Banarasidas v. State**

of Uttar Pradesh⁵, wherein it was held thus:

“An application for special leave to appeal is to be filed in the time limited by the Rules of the Supreme Court. Where there was a delay of 44 days in filing the petition for special leave and the only ground urged in support of the application for condonation of delay was that the petitioners had to collect money from amongst a large number of petitioners who were interested in the case.”

In another judgment, the Apex Court in **Nav Rattanmal v. State of Rajasthan⁶** held as follows:

“It may be mentioned that in the case of governmental machinery, it is a known fact that it does not move as quickly as the case of individuals. Apart from the delay occurring in the proper officers ascertaining that a cause of action has accrued, government being an impersonal body, before a claim is launched there has to be inter-departmental correspondence, consultations, sanctions obtained according to the rules. These necessarily take time and it is because of these features which are sometimes characterized as red-tape that there is delay in the functioning of government offices”.

But, in the present case, though the notice was received in execution petition on 31.05.2013, they did not offer any explanation for delay after receipt of notice on 31.05.2013 in the execution petition for delivery of property, though, the petitioner is aware about passing of *ex parte* decree dated 29.04.2011. In the absence of any explanation, which prevented the petitioner herein from filing the petition, at least the delay from 31.05.2013 till 15.06.2015 cannot be condoned on

⁵. AIR 1956 SC 520

⁶. AIR 1961 SC 1704

mere asking. The administrative procedures alone is not sufficient ground which prevented the petitioner from filing a petition, at least on receipt of notice in execution proceedings. In view of the principles laid down by the Hon'ble Supreme Court in the judgments referred supra, and in the latter judgment in **Lanka Venkateswarlu v. State of Andhra Pradesh**⁷, the Apex Court 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 predilections cannot and should not form the basis of exercising discretionary powers.”

⁷ (2011) 4 SCC 363

If the principle laid down in the above is applied, delay caused for about two years due to administrative communication etc., cannot be construed as sufficient cause to condone abnormal delay when the public sector undertaking and its employees exhibited sheer negligence in prosecuting the proceedings before the Court even after receipt of notice in the execution petition.

11. The learned counsel for the petitioner mainly contended that length of delay is not ground if the petitioner is able to establish that he was prevented by sufficient cause and placed reliance on the judgment in **Balwant Singh**¹, where the Apex Court held thus:

“...It must be kept in mind that whenever a law is enacted by the legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word, have to be given full effect, keeping the legislative intent in mind, in order to ensure that the projected object is achieved. In other words, no provisions can be treated to have been enacted purposelessly. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such an interpretation to provisions which would render the provision ineffective or odious. Once the legislature has enacted the provisions of Order 22, with particular reference to Rule 9, and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. If we accept the contention of the Learned Counsel appearing for the applicant that the Court should take a very liberal approach and interpret these provisions (Order 22 Rule 9 of the CPC and Section 5 of the Limitation Act)

in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative. Such approach or interpretation would hardly be permissible in law. Liberal construction of the expression 'sufficient cause' is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. There can be instances where the Court should condone the delay; equally there would be cases where the Court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect 'sufficient cause' as understood in law. [Advanced Law Lexicon, P. Ramanatha Aiyar, 2nd Edition, 1997] The expression 'sufficient cause' implies the presence of legal and adequate reasons. The word 'sufficient' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005]”

12. In **Kandriga Subba Reddy**⁴, a Division Bench of this Court held that even the Government bodies shall give plausible and acceptable explanation for condonation of delay in filing cases instead of offering vague and routine explanations. This judgment is also not helpful to the petitioner and on the other hand, the principle laid down in the judgment obligates the Government to give plausible and acceptable explanation for condonation of delay. In the present case, delay from the date of receipt of notice in the execution petition i.e., 31.05.2013 about passing of an *ex parte* decree, dated 29.04.2011, but, the petition was filed almost two years fourteen days thereafter without offering explanation except due to official communication. Such reason is not acceptable as sufficient cause to condone delay of 1480 days.

13. In **Maniben Devraj Shah**², while deciding a petition under Section 5 of the Act, 1963, held that when there is administrative delay of more than seven years in filing appeal, when may not be condoned on the ground that (a) explanation for said delay being non-specific and *prima facie* seeming concocted, and (b) delay causing prejudice to private appellant, who *bona fide* believed that, after limitation for appeal had lapsed. Similarly, in **Amarnath Yadav**³, the Apex Court considered the words 'sufficient cause' to condone delay of 481 days that occurred on account of moving of files from one department to another came up for consideration and the Apex Court held that it is not sufficient cause for condonation of abnormal delay. If the principle laid down in the said judgment is applied to the

present case, delay of 1481 days on account of administrative communication etc., cannot be considered as 'sufficient cause' which prevented the petitioner herein from filing application under Order IX, Rule 13 of the Code as it was not beyond the control of the petitioner. Therefore, the trial Court has rightly dismissed the petition and the impugned order does not warrant interference of this Court. Hence, I find no ground to set aside the order passed by the trial Court dismissing the petition to condone delay of 1481 days in filing petition to set aside the *ex parte* decree under Order IX, Rule 13 of the Code and, consequently, the revision is liable to be dismissed.

In the result, this Civil Revision Petition is dismissed confirming the order, dated 08.09.2017, in I.A. No.410 of 2015 in O.S. No.112 of 2011, passed by the learned III Additional Senior Civil Judge, Vijayawada, dismissing the application filed under Section 5 of the Limitation Act, 1963. However, in the circumstances, there shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the present revision, stand closed.

M. SATYANARAYANA MURTHY, J

November 09, 2018.

Mgr