

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.5708 OF 2017

ORDER:

Heard Sri A. Suryanarayana, learned counsel for the petitioner.

No representation for the respondent.

2. The Chief Judge, City Civil Court, Hyderabad, by the order dated 22.08.2017 in I.A. No.2869 of 2017 in A.S.S.R. No.14360 of 2017, dismissed the application filed under Order - XLI Rule 3(A) of Code of Civil Procedure, 1908, read with Section 5 of Limitation Act, 1963, to condone the delay of 66 days in preferring the appeal against the judgment and decree in O.S. No.2531 of 2015 on the file of the learned VIII Junior Civil Judge, City Civil Court, Hyderabad.

3. The learned counsel would submit that the petitioner herein filed the aforesaid suit seeking perpetual injunction over the plaint schedule property and since petitioner's rights in immovable property are involved, rejection of request and dismissal of the application is not justified. The learned counsel would submit that out of ninety (90) days, thirty (30) days was covered by summer vacation and since the petitioner was unable to contact his Advocate, there was delay in preferring the appeal and the delay of sixty six (66) days is not inordinate delay.

4. Perused the order under revision including the material on record.

5. The trial Court holding that the reasons assigned by the petitioner are neither satisfactory nor convincing and the petition is devoid of merits, dismissed the petition. The cardinal principle to adopt a liberal approach where the delay is not that huge. The guidelines laid down by the Hon'ble Supreme Court in **Collector, Land Acquisition, Anantnag v. Mst. Katji**¹ would aptly apply to the present fact-situation. The guidelines read thus:

“The legislature has conferred the power to condone delay by enacting S.5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature 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 is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

¹ AIR 1987 SC 1353

2. Refusing to condone delay can result in a 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.

3. "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.

4. 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.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected 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.

6. Therefore, the present Civil Revision Petition is allowed setting aside the order under revision passed by the Court below condoning the delay of ninety (90) days. The Court below is directed

to number the appeal if it is otherwise in order, for disposal in accordance with law.

7. With the above directions, the Civil Revision Petition is allowed at the admission stage itself. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present Civil Revision Petition stand closed.

April 27, 2018.

PV

A. SHANKAR NARAYANA, J

