

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6607 of 2017

ORDER:

1) Aggrieved by the order dated 12.09.2017, passed in I.A.No.1326 of 2013 in O.S.No.1302 of 2006 on the file of the Principal Junior Civil Judge, Kakinada, wherein an application filed by the petitioner/ plaintiff No.3 to condone the delay of 59 days in filing a petition to set aside the default order dated 20.11.2012, is rejected, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The petitioner along with respondent Nos.12 to 18 herein, filed O.S.No.1302 of 2006 seeking permanent injunction restraining the defendants therein from interfering with their possession and enjoyment of the plaint schedule property in any manner. A perusal of the affidavit filed in support of the petition would show that while the matter was posted for cross-examination of PW.1, I.A.No.724 of 2010 came to be filed, to send the letter dated 18.01.2005, to the Revenue Authorities for collection of Stamp duty. In the meanwhile, plaintiff No.7 died on 25.08.2012 and as the legal representatives of plaintiff No.7 have refused to come on record as co-plaintiffs, the plaintiffs could not file any petition to add the legal representatives of plaintiff No.7. On 15.12.2012, the counsel for the plaintiffs returned the case bundle along with no objection vakalath informing that the suit was dismissed on 20.11.2012, as no

steps were taken to bring the legal representatives of plaintiff No.7. It is said that taking advantage of the dismissal orders the defendants are trying to meddle with the property. On coming to know about the same, the plaintiffs filed restoration petition along with I.A.No.1326 of 2013 to condone the delay of 59 days in filing the petition, to set aside the default order dated 20.11.2012.

3) Respondents/defendants filed counter contending that the petitioner failed to give any reasons as to what happened on 20.11.2012 and the petitioners also failed to explain day today delay in filing the petition.

4) After considering the rival submissions made, the trial Court dismissed the said petition. Challenging the same the present revision is filed.

5) Learned counsel for the petitioner mainly submits that taking advantage of dismissal of the suit, the defendants are trying to interfere with their property; that great prejudice would be caused to the petitioner if the delay is not condoned and the trial Court erred in dismissing the petition.

6) In *State of Bihar and others v. Kameshwar Prasad Singh and another*¹ the Apex Court held as under:

“11. Power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing of matter on merits. This court in *Collector, Land*

¹ (2000) 9 SCC 94

*Acquisition, Anantnag v. Mst. Katiji*² held that the expression 'sufficient cause' employed by the legislature in the Limitation Act 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 was further observed that a liberal approach is adopted on principle as it is realised that:

- 1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.
- 2) Refusing to condone delay can result in 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

² (1987) ILLJ, 500 SC

litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

- 6) It must be grasped that judicial is inspected 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.”

- 9) In [State of Nagaland v. Lipok Ao and others](#)³ the Apex Court held as under:

“Proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. What constitutes sufficient cause cannot be laid down by hard-and-fast rule section.”

- 10) From the judgments of the Apex Court referred to above, it is clear that delay can be condoned if the circumstances of the case indicate that meritorious matter was being thrown out and the cause of justice would be defeated, if the delay is not condoned. The Apex Court has categorically held that even if the delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

- 11) In the instant case, the suit is filed for injunction and the delay is only 59 days. In view of the judgments referred to above and taking into consideration the totality of the facts and circumstances of the case and the nature of suit filed, the impugned

³ (2005) 3 SCJ 558

order is liable to be *set aside* and the delay in filing the petition to *set aside* the default order dated 20.11.2012 has to be allowed.

12) Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

09.03.2018

gkv

