

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.7483 OF 2017

ORDER :

This Civil Revision Petition is filed by the petitioners/defendants against order dated 18.12.2017 in I.A.No.1376/2017 in O.S.No.240/2007, wherein and whereby the Court below dismissed the application filed by the petitioners for condoning the delay of 338 days in filing the application under Order 9 Rule 13 CPC for setting aside the exparte decree.

Heard learned counsel for the petitioners, who submits that the suit is filed for specific performance of sale and same is based on an unregistered and unstamped agreement of sale. He submits that though the petitioners filed written statement, because of the communication gap between the petitioners and their counsel, petitioners could not approach their counsel and know the status of the suit and take steps for filing the petition for setting aside the exparte judgment and decree in time. He also submits that the substantial property rights are involved in the suit, as such, the Court below could have liberally considered the same and condoned the delay. He also submits that the respondent/plaintiff also gave wrong address of the petitioners/defendants in the plaint, as such, their counsel could not contact them. Therefore, there was communication gap between the petitioners and their counsel before the Court below. In support of his contentions, he relied on the judgments

reported in **Manoharan v. Sivarajan**¹ and **N.Balakrishnan v. M.Krishnamurthy**².

In this case, it is to be seen that admittedly, the suit is filed for specific performance of sale agreement. A perusal of the plaint goes to show that the address mentioned in the plaint and the address shown in the documents filed by the petitioners where they resides is not the same address and that they are different addresses. The Court below passed an elaborate order and this Court is of the opinion that there is no infirmity or illegality in the order by the Court below. The Court below has given cogent reasons for dismissing the application. In **Manoharan v. Sivarajan** (supra), the Hon'ble Supreme Court held as follows:

8. In the case of **State of Bihar & Ors. v. Kameshwar Prasad Singh & Anr.**[1], it was held that 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 the cases on merit. The relevant paragraphs of the case read 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 matters on merits. This Court in **Collector, Land Acquisition, Anantnag v. Mst. Katiji** (1987)ILLJ 500 SC 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 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.

¹ (2014) 4 Supreme Court Cases 163

² (1998) 7 Supreme Court Cases 123

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.

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12. After referring to the various judgments reported in [New India Insurance Co. Ltd. v. Shanti Misra](#) [1976] 2 SCR 266, [Brij Inder Singh v. Kanshi Ram](#) (1918)ILR 45 P.C. 94, [Shakuntala Devi Jain v. Kuntal Kumari](#) [1969]1 SCR 1006, [Concord of India Insurance Co. Ltd. v. Nirmala Devi](#) [1979] 118 ITR 507(SC), [Lala Mata Din v. A. Narayanan](#) [1970] 2 SCR 90, [State of Kerala v. E.K. Kuriyipe](#) 1981 (Supp)SCC 72, [Milavi Devi v. Dina Nath](#) (1982)3 SCC 366a, [O.P. Kathpalia v. Lakhmir Singh](#) AIR 1984 SC 1744, [Collector, Land Acquisition v. Katiji](#) (1987) ILLJ 500 SC, [Prabha v. Ram Parkash Kalra](#) 1987 Supp(1)SCC 399, [G. Ramegowda, Major v. Sp. Land Acquisition Officer](#) [1988] 3 SCR 198, [Scheduled Caste Co-op. Land Owning Society Ltd. v. Union of India](#) AIR 1991 SC 730, [Binod Bihari Singh v. Union of India](#) AIR 1993 SC 1245, [Shakambari & Co. v. Union of India](#) AIR 1992 SC 2090, [Ram Kishan v. U.P. SRTC](#) 1994 Supp(2)SCC 507 and [Warlu v. Gangotribai](#) AIR 1994 SC 466, this Court in [State of Haryana v. Chandra Mani](#) 2002(143) ELT 249(SC) held ;

‘.....The expression 'sufficient cause' should, therefore, be considered with pragmatism in justice-oriented process approach rather than the technical detention of sufficient case for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of pragmatic approach injustice oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorize the officers to take a decision to give appropriate permission for settlement. In the event of decision to file the appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.’ To the same effect is the judgment of this Court in [Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma](#) AIR 1996 SC 2750.

In [Nand Kishore v. State of Punjab](#) (1995)6 SCC 614 this Court under the peculiar circumstances of the case condoned the delay in approaching this Court of about 31 years. In [N. Balakrishnan v. M. Krishnamurthy](#) 2008(228)ELT 162(SC) this Court held that the purpose of [Limitation Act](#) was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare. The primary function of a Court is to adjudicate disputes between the parties and to advance substantial justice. The time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. The object of providing legal remedy is to repair the damage caused by reason of legal injury. If the explanation given does not smack mala fides or is not shown to have been put forth as a part of a dilatory strategy, the Court must show utmost consideration to the suitor. In this context it was observed in 2008(228) ELT 162(SC) :

It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the [Limitation Act](#) does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontrollable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and

normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court.”

In **N.Balakrishnan v. M.Krishnamurthy (supra)** the Hon’ble Supreme Court held as follows:

“10.The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. the object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the *maxim* Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

As already observed supra, the suit is filed for specific performance of an agreement of sale and substantial property rights are involved. This Court, at the time of admission passed an interim order granting interim stay as prayed for on condition of petitioners paying an amount of Rs.10,000/- to the respondent for engaging an Advocate in this CRP by the next date of hearing and also to file proof of payment. Now, learned counsel for the petitioners filed memo stating that the costs as ordered by this Court have been paid to the respondent/plaintiff directly, but there is no

appearance on behalf of the respondent/plaintiff, though notice is served and costs are paid.

Taking all the above factors into consideration and also the law laid down by the Hon'ble Supreme Court, this Court is of the opinion that since the petitioners have already paid costs to the respondent, an opportunity can be given to the petitioners to put forth their case. As such, the impugned order passed by the Court below is liable to be set aside and accordingly set aside. Since the suit is of the year 2007, the Court below is directed to dispose of the said suit within a period of six months from the date of receipt of a copy of this order. If petitioners do not cooperate with the trial, it is open for the court below to proceed further in the suit.

Accordingly, this Civil Revision Petition is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed.

A.RAJASHEKER REDDY, J

19-02-2018
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