

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.1598 of 2019

ORDER :

This Civil Revision Petition is filed challenging the order dt.17.04.2019 passed in Interlocutory Application No.247 of 2014 in Original Suit No.73 of 2004 on the file of the V Additional District and Sessions Judge, Ranga Reddy District, at L.B. Nagar.

2. The petitioners herein are plaintiffs in the above suit.
3. The said suit was filed by petitioners against respondents for specific performance of an Agreement-of-Sale dt.26.03.1997 and for a perpetual injunction restraining respondents from alienating the suit schedule property.
4. On 30.04.2004, the Court below in Interlocutory Application No.949 of 2004 in Original Suit No.73 of 2004 granted an order restraining the 1st respondent from alienating the suit schedule property on condition of petitioners depositing Rs.10 lakhs by the first hearing date of the suit on or before 29.06.2004 to prove the petitioners' *bona fides* and readiness and willingness to perform their part of the contract.
5. The petitioners complied with the same.
6. Thereafter, Written Statement was filed by respondents in the year 2010.

7. On 22.09.2010, the Court below recorded that there was no representation on behalf of the parties. It then adjourned the matter to 30.09.2010. But, on that day also the petitioners reported not ready to commence trial and as a last chance, it was posted to 20.10.2010.

8. On 20.10.2010 also, the petitioners reported 'not ready' and the matter was posted peremptorily to 10.11.2010.

9. On 10.11.2010, the petitioners did not adduce any evidence, and so, the suit was dismissed for default by the Court below recording specifically that 2nd petitioner was present, that the counsel for petitioners sought time for trial, and that since the matter had been posted peremptorily after due cautions and finally as a last chance, the suit is dismissed for default.

10. The petitioners waited till 09.04.2014 to file I.A.No.247 of 2014 under Section 5 of the Limitation Act to condone the delay of (1216) days from 09.12.2010 to 09.04.2010 in filing the petition to set aside the order dt.10.11.2010 passed by the Court below.

11. In the affidavit filed in support of the said application, it is contended that petitioners are not well-versed in legal proceedings; that they appeared before the Court below and waited in the Court Hall till 03:00 p.m. on 10.11.2010; that they were asked by their earlier Advocate to go home; that the Advocate advised them that as and when he informs the petitioners, they should contact him, but he did not ever contact them; that the lapse on their part in not appearing

before the Court on 10.11.2010 is not their lapse; that it is the lapse of their earlier Advocate, who played fraud on them by keeping them dark about their case; that they came to know about the passing of the order of dismissal of the suit for default on 11.03.2014; they applied for certified copy of the said order, and it was furnished to them on 24.03.2014; and so, the delay be condoned.

12. Counter-affidavit was filed by 3rd respondent on behalf of respondent nos.2 and 3 opposing the condonation of delay in filing the application to set aside the order dismissing the suit for default. They pointed out that on a number of occasions, the petitioners and their counsel failed to attend the Court and they did not prosecute the case in spite of being given ample opportunities, and so, the Court below was right in dismissing the suit for non-prosecution. They denied that 2nd petitioner was present in the Court on 10.11.2010, and stated that had he been in the Court on 10.11.2010, he would have known the next date of hearing and would have appeared in the Court on the next date of hearing; that petitioners did not mention the name of the Advocate who they had engaged at that point of time; and that they cannot simply blame the Advocate for their negligence.

13. By order dt.17.04.2019, the Court below dismissed the said application. It recorded that several opportunities have been given to petitioners to lead evidence on 22.09.2010, 30.09.2010, 20.10.2010 and 10.11.2010, but the petitioners did not evince any interest to commence the trial in spite of sufficient warning, and so, the suit was

rightly dismissed for default; and the delay of (1216) days in filing the application I.A.No.247 of 2014 deserves rejection because petitioners did not prosecute the suit with due diligence.

14. Challenging the same, the present Civil Revision Petition is filed.

15. The counsel for petitioners contended that petitioners had filed the suit for specific performance and had also deposited the sum of Rs.10 lakhs pursuant to a direction by this Court on 30.04.2004, but on account of lapses on the part of their counsel, the petitioners should not be penalized.

16. The counsel for petitioners placed reliance on the decisions in **Jayalakshmi vs. Allavudin¹, Madan Hundraj Thakur and 7 others vs. Vishindas Jethanand Materja and another², Ithagani Lachaiah and others vs. Joint Collector and Additional District Magistrate, Nalgonda and others³, Basawaraj and another vs. Special Land Acquisition Officer⁴, R. Krishna alias Kistaiah vs. R. Bala Narasaiah (died) per LRs and others⁵, and N. Balakrishnan vs. M. Krishnamurthy⁶.**

17. From the facts narrated above, it is clear that the suit was filed by petitioners for specific performance of an agreement of sale and, at

¹ Unreported decision of the Madras High Court in CRP(NPD) No.2255 of 2012 Dt.24.02.2017

² Unreported decision of the Gujarat High Court in Civil Application No.2798 of 2014, Dt.17.09.2014

³ 2014 (1) A.L.T. 81

⁴ 2014 (1) A.L.D. 33 (S.C.)

⁵ 2014 (2) A.L.D. 297

⁶ (1998) 7 S.C.C. 123

the instance of the Court, in order to obtain an order restraining the respondents from alienating the suit schedule property, pending suit, they had also deposited a sum of Rs.10 lakhs in the year 2000.

18. When the suit came up for trial in the year 2010, in spite of being given opportunities on 22.09.2010, 30.09.2010, 20.10.2010 and 10.11.2010, the petitioners did not commence trial though warned by the Court on more than one occasion; that the Court below specifically informed them that it would act peremptorily if they do not commence trial since the matter was already an identified matter; and they ignored the said warning and so the suit was dismissed for default.

19. The Court below, in its order dt.10.11.2010 noted that the 2nd petitioner was present in the Court, and the counsel for petitioners again sought time for starting the trial.

20. This attitude of petitioners shows that petitioners were only keen to drag on the matter inordinately without commencing trial to harass the respondents.

21. Atleast once the suit was dismissed for default on 10.11.2010, petitioners should have immediately moved the Court and taken steps to get the suit restored. But they did nothing till 09.04.2014.

22. No valid reason is assigned by the petitioners why they kept quiet for about (1216) days when they knew on 10.11.2010 itself,

because of presence of 2nd petitioner and the counsel for petitioners in the Court about the order dt.10.11.2010 dismissing the suit for default.

23. In **Jayalakshmi** (1 supra), the Madras High Court observed that liberal approach should be adopted in considering applications for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act. In that case, the Supreme Court had condoned the delay of (715) days on payment of costs of Rs.50,000/-. The condonation of delay in that case was done because the petitioner was a poor lady aged about 84 years, who had lost her eye-sight and her husband. Such is not the situation in the instant case. Therefore, the said decision has no application.

24. In **Vishindas Jethanand Materja** (2 supra), the Gujarat High Court had condoned the delay of (1733) days in challenging the order dt.07.05.2009 in C.M.A.No.298 of 2008 and C.M.A.No.299 of 2008 rendered by the City Civil Court, at Ahmedabad. By the said order, application of the respondents therein to restrain the applicants from transferring properties and from disposing of books of accounts till arbitration proceedings are completed were allowed. The reason for delay in the said case, according to the applicants before the Gujarat High Court, they applied for certified copy of the impugned order, but it was not delivered to them by the clerk of the advocate inspite of repeated demands by them. In the meanwhile there was an order passed appointing an arbitrator, but there was no award in time till the term of the arbitration by the High Court had expired. They

contended that a second application was made and the matter went up to the Supreme Court and considerable time was consumed. They stated that later clerk of the advocate stated that he lost the certified copy and so they had to apply afresh and then got the appeals filed. The Gujarat High Court held that it is a human error in not supplying certified copies in time to the applicants and the respondents did not controvert or try to rebut the statement on oath either by cross-examination or by filing of affidavit.

25. The facts in the said case are entirely different from the instant case and the said decision has no application.

26. In **Ithagani Lachaiah and others** (3 supra), this court condoned the delay of 1929 days in filing restoration petition to set aside order dt.13.02.2007 in W.P. No.33159 of 1997 which had been dismissed for default and to restore the Writ Petition. The reason assigned in the said case by the petitioners was that their counsel, due to oversight did not represent the matter when it was listed and the parties came to know only when a notice dt.26.06.2012 was issued by the 2nd respondent in the writ petition to them. The Court accepted the said explanation by taking a liberal view of the matter and held that there was no negligence on the part of the petitioners in approaching the court belatedly. It imposed costs of Rs.10,000/- on the petitioners.

27. In the instant case the court below has recorded that the 2nd plaintiff/2nd petitioner as well as the counsel for the

plaintiffs/petitioners appeared before it on 10.11.2010 and the suit was dismissed for default due to the fact that petitioners were not ready to commence trial inspite of several earlier warnings to start trial. Therefore, petitioners have to show sufficient cause for condoning the delay in filing the application under Or IX Rule 9 CPC belatedly on 09.04.2014 and why they could not file the same immediately. The above decision therefore does not apply.

28. In **N. Balakrishnan** (6 supra), the Supreme Court held that condonation of delay is a matter of discretion of the court and Section 5 of the limitation Act, 1963 does not say that such discretion can be exercised only if the delay is within certain limit. It held that *length of delay is no matter, acceptability of the explanation is the only criterion*. It also observed that the primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice and 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. It held that rules of limitation are not meant to destroy the rights of parties, but they are meant to see that parties do not resort to dilatory tactics and seek their remedy promptly. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. It observed that in every case of delay, there can be some lapse on the part of the litigant concerned, but that alone is not enough to turn down his plea and to shut the door against him. It declared that if the explanation does not

smack of malafides and it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should compensate opposite party for his loss.

29. This decision was followed in **R. Krishna** (5 supra) and delay of 502 days in filing application to set aside an ex parte decree was condoned on the ground that the counsel misled the party stating that he would call them as and when their presence is required, but did not do so and did not also represent the case, because of which the party was set *ex parte* and later *ex parte* decree was passed.

30. In **Basawaraj and another** (6 supra), the Supreme Court held that there is no strait jacket formula to apply when condonation of delay is sought. Though the expression “sufficient cause” in Section 5 of Limitation Act, 1963 should be given a liberal interpretation to ensure that substantial justice is done, where negligence, inaction or lack of bonafides are imputed to the party seeking condonation of delay, delay cannot be condoned. It reiterated that statute of limitation is founded on public policy and an unlimited limitation would lead to a sense of insecurity and uncertainty. It observed that limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party’s own inaction, negligence or laches. It declared

that in case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found not to have acted diligently or remained inactive, there cannot be a justified ground to condone the delay.

31. Applying the said principle to the instant case, I am of the opinion that there is gross negligence, inaction and want of bonafides on the part of the petitioners in filing the application under Order IX Rule 9 CPC to restore the suit; that there is no valid cause shown by them for their silence and inaction between 10.11.2010 and 09.04.2014 when they filed the application to condone delay of 1216 days in seeking to set aside the order dismissing the suit; and when the suit was dismissed for default on 10.11.2010 in the presence of 2nd petitioner/plaintiff and the counsel for the petitioners, they ought to have filed application under Order IX Rule 9 CPC within reasonable time, but they did not do so.

32. Accordingly, I do not find any error of jurisdiction in the order passed by the court below warranting interference by this court with it under Article 227 of the Constitution of India.

33. Therefore, the CRP is dismissed. No costs. The amount of Rs.10,00,000/- which had been deposited by the petitioners pursuant to the order dt.30.04.2004 in I.A. No.949 of 2004 in O.S. No.73 of 2004 along with accrued interest thereon shall be returned to the

petitioners by the court below within six weeks from the date of receipt of the copy of this order.

M.S. RAMACHANDRA RAO, J

Date: 31.07.2019
NDR

