

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO.1769 OF 2019

ORDER:

This Revision is filed under Section 115 of the Code of Civil Procedure, 1908 (CPC) challenging the order dt. 22.09.2018 in I.A.No.259 of 2018 in O.S.No.90 of 2016 on the file of the Senior Civil Judge at Siddipet.

Petitioner herein is third defendant in the said suit.

The said suit was filed for declaration of title of the third respondent/plaintiff in respect of the suit schedule property, for recovery of possession thereof and also for perpetual injunction restraining the petitioner from altering physical features of the land by way of construction or otherwise.

Petitioner received summons on 22.06.2017, engaged an advocate, who filed vakalat on 26.07.2017, but did not file written statement.

Therefore, she was set *ex parte* and ultimately, an *ex parte* decree was passed on 29.12.2017 in the suit.

140 days later, petitioner filed I.A.No.259 of 2018 under Section 5 of the Limitation Act, 1963, to condone the delay of 140 days in filing application under Order IX Rule 13 CPC to set aside the *ex parte* decree dated 29.12.2017 and also another application to set aside the *ex parte* decree.

In the affidavit filed in support of the application, she stated that on 01.11.2017 she could not appear before the Court due to her

ill-health and also could not communicate to her counsel and so she was set *ex parte* and then an *ex parte* decree was passed.

Counter affidavit was filed by the third respondent/plaintiff opposing the said application stating that after 26.07.2017, the suit was adjourned to 28.08.2017, 21.09.2017, 13.10.2017 and 01.11.2017 to enable the petitioner to file written statement; that there was no representation on behalf of the petitioner; and therefore, petitioner was set *ex parte* and an *ex parte* decree was passed on 29.12.2017.

The contention of the petitioner that she suffered ill-health and so could not communicate with her counsel was denied and it was pointed out that as to what is the ill-health of the petitioner was not satisfactorily explained. It is contended that the petitioner is deliberately negligent in pursuing the suit and so, the application should be dismissed.

By order dated 22.09.2018, the Court below dismissed I.A.No.259 of 2018. It observed that having filed vakalat on 26.07.2017, the petitioner did not avail several opportunities available to her to file written statement, that the delay is not properly explained and no medical evidence is adduced about her illness.

Assailing the same, this Revision is filed.

Counsel for the petitioner contended that the Court below erred in dismissing the application for condonation of delay and ought to have taken a liberal view of the matter taking into account the ill-health of the petitioner and condoned the delay.

It is not in dispute that the petitioner had received summons in the suit on 22.06.2017, and she engaged a counsel who filed vakalat on 26.07.2017.

It is also not denied by the petitioner that thereafter, the matter was adjourned from time to time to enable the petitioner to file her written statement from 28.08.2017 to 01.11.2017. Petitioner, however, did not file written statement and there was no representation on her behalf. So, she was set *ex parte* and ultimately, *ex parte* decree came to be passed on 29.12.2017.

Though the petitioner pleaded that she was unwell on 01.11.2017, no evidence of such ill-health has been adduced by the petitioner. Also the cause for the delay between 01.11.2017 and 20.03.2019, when petitioner filed the application under Section 5 of the Limitation Act, 1963, is not explained. Even the nature of the illness which the petitioner suffered from and the duration of such illness are not mentioned.

In **N. Balakrishnan v. M. Krishnamurthy**¹, 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

¹ (1998)7 SCC 123

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 the 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.

In **Basawaraj and another v. Special Land Acquisition Officer**², 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

² 2014(1) ALD 33 (SC)

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

In my considered opinion, there is clear negligence and inaction on the part of the petitioner in protecting/defending her interests in the suit and there is no sufficient cause shown by the petitioner for condoning the delay of 140 days in filing the application to set aside the *ex parte* decree.

Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court with its power under Section 115 CPC.

Thus, Revision fails and is dismissed.

There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand dismissed.

(M.S.RAMACHANDRA RAO, J)

2nd August 2019
RRB