

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE K.LAKSHMAN**

CRP.No.2169 of 2019

and

CMA.No.895 of 2019

COMMON ORDER: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

1. Both these matters arise between the same parties out of the same suit and so they are being disposed of by this common order.
2. Petitioner in both these cases is the defendant in OS.No.11 of 2019 on the file of the V Additional District and Sessions Judge, Ranga Reddy District at LB.Nagar.
3. The respondents 1 to 6 filed the said suit against the petitioner in CRP/appellant in CMA for specific performance of an agreement of sale dt.12.06.2018.
4. In the said suit, summons was served on the petitioner's wife. According to the petitioner/appellant, he was not aware of the summons, as his wife had misplaced the same and he came to know about the proceedings only on 04.06.2019, when notice in the EP. was received by him. However, the Court had set the petitioner *ex-parte* and passed an *ex-parte* decree on 18.03.2019.
5. The petitioner/appellant filed IA.No.609 of 2019 under Section 5 of the Limitation Act, 1963 to condone the delay of 56 days in filing the petition to set aside the *ex-parte* decree

dt.18.03.2019 in OS.No.11 of 2019 and also IASR.No.1496 of 2019 under Order IX Rule 13 CPC to set aside the *ex-parte* decree.

6. In the affidavit filed in support of IA.No.609 of 2019, it is the contention of the petitioner/appellant that the suit had been decided *ex-parte* and though summons were received by his wife, he had no knowledge of the same as the summons were misplaced and he came to know about the suit proceedings only on 04.06.2019 when notice in EP was served on him. He alleged that respondents were money lenders and he executed the agreement of sale on 12.06.2018 in their favour only towards security and also gave ten signed blank cheques as he was in need of money and he has no intention to alienate the property and so he sought for condonation of delay.

7. The respondents filed counter opposing the application for condonation of delay stating that there is no *iota* of truth in the averments made by the petitioner in IA.No.609 of 2019, that summons were received by the wife of the petitioner/appellant, and he has been trying to drag on the proceedings and there cannot be any possibility of obtaining sale agreement for other purposes. It is also contended that the sale agreement is a registered agreement and an advance sale consideration of Rs.84 lakhs out of total sale consideration of Rs.1,05,00,000/- was received by the petitioner/appellant and the respondents had even deposited the remaining balance sale consideration by way of Demand Draft. They contended that the IA.No.609 of 2019 was

filed vexatiously and the delay in filing the application for condonation of delay is not properly explained and it should be dismissed.

8. Similar pleas were raised by both parties in IASR.No.1496 of 2019 as well.

9. By order dt.25.07.2019, the application IA.No.609 of 2019 was dismissed by the trial Court and challenging the same *CRP.No.2169 of 2019* has been filed in this Court by the petitioner.

10. By another order dt.18.09.2019, IASR.No.1496 of 2019 was dismissed by the Court below and challenging the same, *CMA.No.895 of 2019* has been filed.

11. Heard Sri Vedula Venkata Ramana, Senior Counsel appearing for the petitioner/appellant and Sri G.Venugopal Reddy, Counsel for the respondents.

12. In the order passed by the Court below in IA.No.609 of 2019 dismissing the application for condonation of delay of 56 days in filing the petition to set aside the *ex-parte* decree dt.18.03.2019 in OS.No.11 of 2019, it held that petitioner/appellant had knowledge of the suit summons, since his wife received the summons and despite having knowledge, he carelessly ignored the Court proceedings. It is also stated that in an IA directing the petitioner/appellant not to alienate the property, notice was

served on him, much prior to the suit in January, 2019 itself i.e. 25.01.2019. It is further observed that on 19.02.2019, summons were served on the wife of the petitioner/appellant, and it was endorsed 'service held sufficient', that after EP was filed in April, 2019 in which also notice was served on the petitioner's mother, he started contesting the matter and filed counter, but the petitioner filed on 12.06.2019 IA.No.609 of 2019 seeking condonation of delay of 56 days in filing the petition to set aside the *ex-parte* decree. It also took note of the fact that 80% of the amount of consideration mentioned in the sale agreement was paid by way of Demand Drafts and the petitioner/appellant did not explain why he executed the sale agreement if it was only a security for the loan obtained by him. It further stated that the plea of the petitioner that blank undated cheques were obtained from him also appears to be created only for the purpose of this application. It held that the conduct of the petitioner/appellant does not inspire any confidence that he has respect to judicial process and he did not explain the day-to-day delay in filing this application and sufficient cause for the delay in filing this application. It observed that the petitioner/appellant did not claim that he was sick or bed ridden or was prevented from any other cause. It thus rejected IA.No.609 of 2019 by its order dt.25.07.2019 and consequently dismissed IA.SR.No.1496 of 2019 on 18.09.2019.

13. A perusal of the record indicates that the suit was filed on 31.01.2019. Therefore, the observation of the trial Court that

notice in an IA was served on the petitioner prior to the suit on 25.01.2019 and therefore the petitioner had knowledge about the suit, cannot be accepted.

14. No doubt, summons has been served on the wife of the petitioner. But according to the petitioner, he was not there at the time of service of summons and his wife misplaced the same and so he was not aware of the suit proceedings till he received notice in EP.

15. In **N. Balakrishnan v. M. Krishnamurthy**¹, the Supreme Court had occasion to consider the scope of power to condone the delay vested in Court under Section 5 of the Limitation Act, 1963. The Court held that condonation of delay is a matter of discretion of the Court and Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit and that length of delay is no matter, acceptability of the explanation is the only criteria. It observed that primary function of the Court is to adjudicate disputes between the parties and to advance substantial justice. It observed that the words 'sufficient cause' used in Section 5 of the Limitation Act, 1963 should receive a liberal construction so as to advance substantial justice. According to the Court 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. If the explanation does not smack of *malafides* or it is not

¹ 1998(7) SCC 123

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 not lean to accept the explanation of the petitioner. It held that while condoning delay, the Court should not forget the opposite party altogether and he must be compensated adequately.

16. Similar view was expressed in **B.Madhuri Goud Vs. B.Damodar Reddy**² and the Court held that there is no hard and fast rule laid down for deciding the application for condonation of delay.

17. In **Basawaraj & Anr. V. The Spl. Land Acquisition Officer**³ the Supreme Court held that in an application for condonation of delay, the applicant must satisfy the Court that he was prevented by any sufficient cause from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay, and that the Court has to examine whether the mistake is *bona fide* or was merely a device to cover an ulterior purpose. It explained that the expression '*sufficient cause*' should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of *bona fides* cannot be imputed to the party concerned. In case of negligence or want of

² 2012(12) SCC 693

³ AIR 2014 SCC 746

bonafides, it held that no Court would be justified in condoning an inordinate delay by imposing any condition whatsoever.

18. In ***Hemlata Verma v. M/s ICICI Prudential Life Insurance Co. Ltd***⁴ the Supreme Court set aside the order of the National Consumer Disputes Redressal Commission dismissing a Revision Petition which was filed with a delay of 207 days as barred by limitation. On the facts of the said case, the Court held that averments in the application for condonation of delay constituted sufficient cause within the meaning of Section 5 of the Limitation Act, and the Court should take a liberal view.

19. In the said decisions, the Supreme Court had accepted that the power to condone delay conferred under Section 5 of the Limitation Act, 1963 is to be liberally construed only so long as negligence, inaction or lack of bonafides cannot be imputed to the applicant seeking condonation of delay. It held that there is no hard and fast rule and each case should be decided on its own facts. It held that the applicant for condonation of delay must satisfy the Court that he was prevented by “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. It also cautioned that an unlimited limitation would lead to a sense of insecurity and uncertainty. No Court would be justified in condoning an inordinate delay caused

⁴ Order dt.01.07.2019 in CA.No.5131 of 2019

by negligence or want of bonafides by imposing any condition whatsoever.

20. In our considered opinion, the reason offered by the petitioner/appellant in IA.No.609 of 2019 for seeking condonation of delay of 56 days in filing the application to set aside the *ex-parte* decree i.e., though the summons were served on his wife on 19.02.2019, he was out of town and she had misplaced it, and it was not brought to his notice, is an acceptable explanation. It is common knowledge that house wives may not understand the significance of documents received in the absence of their spouses either because of illiteracy or otherwise being busy with household duties and they may not communicate it to their spouses. In any event, the delay of 56 days not being much, we are of the opinion that the said delay is liable to be condoned on payment of costs.

21. We are also of the opinion that the Court below ought not to have gone into the merits of the contentions of the parties relating to the suit and ought not to have commented, particularly about the contentions raised by the petitioner/appellant in the impugned order. Therefore, all those observations adverse to the contentions of the petitioner/appellant are set aside.

22. Accordingly, the Civil Revision Petition and Civil Miscellaneous Appeal, both are allowed with costs of Rs.10,000/- to be paid by the petitioner/appellant to the respondents; the order dt.25.07.2019 in IA.No.609 of 2019 is set aside and the said

IA is allowed; the order dt.18.09.2019 in IASR.No.1496 of 2019 in OS.NO.11 of 2019 is set aside and the said IA is allowed; and all the steps taken in the suit after the decree was passed on 18.03.2019 in OS.No.11 of 2019 are declared as *null* and *void* and possession, if any, taken from the petitioner by the respondents shall be restored to the petitioner within a period of four (04) weeks from today. The suit shall stand restored to the file of the V Additional District and Sessions Judge, Ranga Reddy District at LB.Nagar. Petitioner is granted two (02) weeks time from the date of receipt of a copy of this order to file written statement in the suit. The Court shall then proceed to decide the suit, after giving opportunity to both sides to lead evidence, in accordance with law, ignoring the observations made by it in the order dt.25.07.2019 in IA.No.609of 2019 in OS.No.11 of 2019 regarding the merits of the contentions of the petitioner. The Costs shall be deposited by the petitioner to the credit of the suit within a period of two (02) weeks from the date of receipt of a copy of this order. In default of deposit of costs or filing of written statement as aforesaid, both the Revision and Appeal shall stand dismissed.

23. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

19th November, 2019.
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