

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.6338 of 2016

O R D E R:

This Revision is filed challenging the order dt.11.11.2016 in I.A.No.1211 of 2011 in O.S.No.171 of 2010 of the Principal Junior Civil Judge, Karimnagar, refusing to condone the delay of 159 days in filing petition to set aside the *ex-parte* decree dt.03.03.2011 in the said suit.

2. The reason given by the petitioner for not filing the petition within time is that after coming to know about filing of the suit he approached the respondents and asked them about the filing of the said false suit but the respondents told him that they would withdraw the suit, and therefore he did not attend before the Court to proceed with the suit.

3. By order dt.11.11.2016 the Court below rejected the said application. It observed that there is no proper explanation for the delay since petitioner had knowledge of the filing of the suit and he did not show any interest to know what happened to the suit. It also observed that after the *ex-parte* decree passed on 03.03.2011, respondents filed E.P. on 07.05.2011, and petitioner had then come forward before the Court by filing I.A.No.1211 of 2011 on 12.09.2011.

4. Assailing the same, this Revision is filed.

5. Counsel for the petitioner contended that petitioner had shown sufficient cause for condonation of delay; that he believed the 1st respondent, who is his brother, when he told him that he would not proceed with the suit; and therefore the delay be condoned.

6. He also placed reliance on the judgment in **Collector, Land Acquisition, Anantnag and Another v. Mts. Katiji and Others**¹.

7. In the said decision, the Supreme Court is dealing with an application for condonation of delay of the State of Jammu & Kashmir, in which State had filed an appeal with 4 days delay, and the Court observed that liberal approach should be adopted and the word 'sufficient cause' is elastic and has to be interpreted in a pragmatic manner to do justice.

8. However, in **P.K. Ramachandran v. State of Kerala and another**², the Supreme Court has observed that law of limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Court has no power to extend the period of limitation on equitable grounds.

¹ 1987(2) SCC 107

² AIR 1998 SCC 2276

9. In ***N. Balakrishnan v. M. Krishnamurthy***³, the Supreme Court reiterated that Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. It observed that:

“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 ut 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.

12. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under [Section 5](#) of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari* [AIR 1969 SC 575] and *State of West Bengal Vs. The Administrator, Howrah Municipality* [AIR 1972 SC 749].

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation

³ AIR 1998 SC 3222

does not smack of mala fides or 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 delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.

14. In this case explanation for the delay set up by the appellant was found satisfactory to the trial court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising revisional jurisdiction. Nonetheless, the respondent must be compensated particularly because the appellant has secured a sum of Rs. Fifty thousand from the delinquent advocate through the Consumer Disputes Redressal Forum. We, therefore, allow these appeals and set aside the impugned order by restoring the order passed by the trial court but on a condition that appellant shall pay a sum of Rupee Ten thousand to the respondent (or deposit it in this court within one month from this date.”

10. In the instant case, admittedly, petitioner was aware of the filing of the suit and he himself claimed to have approached his brother, 1st respondent, and claimed that 1st respondent assured that he would not proceed with the suit.

11. Therefore, it was incumbent on the petitioner to check the status of the suit and ensure that the alleged promise made by the 1st respondent is kept. Petitioner, however, has been negligent in that regard and has only approached the Court after an EP has been filed six months after the decree was passed in the suit.

12. Therefore, I am of the opinion that petitioner had not been diligent enough and had acted negligently and is not entitled for any interference of this Court.

13. Accordingly, this Civil Revision Petition fails and it is dismissed. No order as to costs.

14. Consequently, miscellaneous petitions pending if any, shall stand closed.

10th April, 2019.

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M.S. RAMACHANDRA RAO, J

