

HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

CIVIL REVISION PETITION No.2829 of 2016

ORDER:

This revision is filed to set aside the order, dated 28.03.2016, in I.A.No.291 of 2014 in L.G.O.P.No.74 of 1997 on the file of the Principal District Judge's Court, Ranga Reddy District at L.B.Nagar.

2. The petitioner filed L.G.O.P.No.74 of 1997 against the respondents in respect of plot No.21 admeasuring 200 square yards covered by sy.No.190 situated at Lothukunta, Alwal Municipality, R.R.District. The said OP was dismissed for default on 15.04.2003 due to non-filing of affidavit. On knowing the same, the present application was filed under Section 5 of the Limitation Act, 1963 (for short "the Act") to condone the delay of (3903) days in filing the petition under Order IX Rule 9 of the Code of Civil Procedure (C.P.C.) with a prayer to set aside the dismissal order, dated 15.04.2003. The counter affidavit was filed by respondent No.9 and adopted by respondent No.3. After considering the contentions of both sides, the trial Court dismissed the application

vide order dated.28.03.2016. Aggrieved by the same, the present revision is filed.

3. Heard learned counsel for the petitioner and learned counsel for respondent Nos.3 and 9. Perused the record.

4. It is the case of the petitioner that she was never informed by her counsel that she has to attend the Court for giving evidence or to file affidavit. On 19.08.2013, when the petitioner approached the Court to know the status of OP, she learnt that the OP is not pending and the same was dismissed on 15.04.2003. Immediately, she approached the previous counsel and took no objection vakalath on 22.12.2013 and handed over the same to another counsel for taking steps for restoration of OP. Meanwhile, there was delay of (3903) days occurred in filing the petition to restore the dismissal order. It is also her case that the delay was neither wilful nor deliberate. If opportunity is denied to the petitioner, she would put to irreparable loss.

5. On the other hand, it is the case of contesting respondents that the petitioner filed the above O.P without having

any right over the property and dragging the matter since 1997 till 2003. She was negligent and did not choose to proceed with the enquiry. As such, the Court below dismissed the OP for default on 10.04.2000. On filing the application, the same was allowed for restoration of OP to its file. It is also their case that respondent No.2 died, but the petitioner failed to bring legal representatives of respondent No.2 on record. Consequently, the petition against respondent No.2 abated. Again the petitioner filed application to set aside the abatement with delay of (150) days. The said application was allowed and ultimately, the legal representatives of respondent No.2 were brought on record. Thereafter, the petitioner failed to proceed with the enquiry and ultimately, the OP was dismissed for default on 15.04.2003. Only to harass the respondents, the petitioner goes on filing the petitions without any justifiable reasons. Though the certified copy of order was made ready on 16.09.2013, she filed the present application after five months of dismissal of OP and failed to show sufficient reasons to condone the delay.

6. In the judgment of **N.Balakrishnan** v. **M.Krishnamurthy**¹, the Hon'ble Apex Court at para No.9 held as under:

“ 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 uncondonable 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 **Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai**², the Hon'ble Apex Court held as under:

14.The law of limitation is founded on public policy. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.

¹ (1998) 7 Supreme Court Cases 123

² 2012 SCC OnLine SC 329

In Collector Land Acquisition, Anantnag v Mst.

Katiji³, the Hon'ble Apex Court held as under:

3. The legislature has conferred the power to condone delay by enacting Section 5 [Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.] of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "*merits*". The expression "sufficient cause" employed by the legislature 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 is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy....."

In **State of T.N. v. M.Muthumani**⁴, the Apex Court at para

No.24 held as under:

What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bonafides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

³ (1987) 2 SCC 107 108

⁴ 2014 SCC Online Mad 10579

In **Pundik Jalam Patil v. Jalgaon Medium Project**⁵, the Supreme Court refused to condone the delay in filing the appeal and observed that Court cannot enquire into belated and stale claims on the ground of equity. The Supreme Court further observed that the Court helps those **who are vigilant** and **‘do not slumber over their rights’**.

7. In view of the proposition of law laid down by the Apex Court, a person seeking condonation of delay has to explain each day's delay with cogent reasons to the satisfaction of the Court. In the instant case, there was abnormal delay of (3903) days, such a long delay cannot be treated in a routine manner and burden is heavy on the petitioner to show sufficient cause to condone such abnormal delay. It is no doubt true that length of delay is no matter, but genuineness and bonafidees of the party in prosecuting the litigation is important. It is settled principle of law that while dealing with application under Section 5 of the Act, the Courts should not approach pedantic and hyper technical approach. The Court has to examine as to whether there is sufficient cause to

⁵ (2009) 5 SCC 907

explain the delay and whether said cause is genuine or bonafidees of the party.

8. Coming to the instant case, though the petitioner took a plea for condonation of delay, which is (3903) days, that her counsel in the OP did not inform her that affidavit has to be filed. But she has taken any steps against her counsel. Even if assuming her version to be true, after dismissal of OP, she filed application for getting certified copy on 19.08.2013 and it was made ready on 16.09.2013. She did not file immediately the present application. But, five months after she learnt about the dismissal of OP., she filed the present application that too without assigning proper reasons to condone the delay of (3903) days in filing the petition under Order IX Rule 9 of C.P.C. to set aside the dismissal order dated 15.04.2003. A perusal of the impugned order also discloses that when respondent No.2 died, she has not taken immediate steps to bring his legal representatives on record. She filed petition to set aside the abatement with delay petition only. As rightly observed by the trial Court, her approach appears to be casual in nature and there are no bonafidees on her part to condone the delay. While

dismissing the application, the trial Court rightly took a view that the petitioner failed to show sufficient cause to condone the abnormal delay of (3903) days.

9. In view of the above, the impugned order does not suffer from any illegality or material irregularity so as to warrant interference by this Court in exercise of revisional jurisdiction under Article 227 of the Constitution of India.

10. Accordingly, the Civil Revision Petition is dismissed. Miscellaneous applications, if any, pending shall stand closed. There shall be no order as to costs.

A.SANTHOSH REDDY, J

23.11.2022

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And such a liberal approach is adopted on principle as it is realized 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.

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.