

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY
CIVIL REVISION PETITION NO.3098 OF 2010

ORDER:

This Civil Revision Petition is filed by the petitioner/ plaintiff assailing the orders dated 22.03.2010 in I.A.No.1401 of 2004 in O.S.No.1340 of 2001 on the file of learned Principal Junior Civil Judge, Ranga Reddy District at L.B.Nagar.

2. This application in I.A.No.1401 of 2004 was filed by the petitioner/plaintiff under Section 5 of Limitation Act to condone the delay of 21 days in filing a petition under Order-IX, Rule-4 of Civil Procedure Code (for short 'CPC') in O.S.No.1340 of 2001, which was dismissed for default on 20.01.2004 for non-filing of paper publication.

3. The Court below, after careful appreciation of the entire material, dismissed the said application with an observation that there was gross negligence, deliberate inaction and lack of *bonafides* on the part of the petitioner, who failed to file the paper publication as directed and there was no representation and accordingly, dismissed the

said application. Feeling aggrieved by the findings recorded by the trial Court, this Civil Revision Petition is filed.

4. Heard learned counsel for the revision petitioner. Perused the record.

5. The original suit in O.S.No.1340 of 2001 was filed by the petitioner/plaintiff for perpetual injunction. It appears, it was dismissed for default for non-filing of proof of publication by way of substituted service on 20.01.2004. As per the orders impugned, previously on 06.08.2002 also the suit was dismissed for default for non-payment of process in compliance of the order dated 10.06.2002. Again it was restored on 06.06.2003 as per the orders in I.A.No.3829 of 2003. On 01.12.2003 publication was ordered and the matter was posted to 20.01.2004 for filing proof of publication but on that day there was no representation, as such the suit was dismissed for default. Again, with a delay of 21 days an application was filed to restore the suit by condoning the delay under Section 5 of Limitation Act. That application, filed by the plaintiff, vide

I.A.No.1401 of 2004, was dismissed by the trial Court holding that the petitioner did not state specifically as to who was sick and relationship of the petitioner with the sick member and the period of sickness, no medical evidence is adduced and except making a bald statement, nothing is produced before the Court to believe that the petitioner/plaintiff was prevented from approaching the Court within the reasonable time and at least there was any representation on behalf of petitioner/plaintiff on the day when the suit was adjourned for filing proof of publication. Accordingly, there are no merits in the said application.

6. Be it stated that the original suit is filed in the year 2001, initially it was dismissed for default on 06.08.2002 for non-payment of process and again it was restored as per the orders dated 06.03.2003 in I.A.No. I.A.No.3829 of 2003. But, the petitioner/plaintiff failed to comply with the directions of the Court in filing the proof of publication against the defendant. Consequently, the suit was again dismissed for default on 20.01.2004 for not filing the proof of publication against the defendant. Thereafter,

the present application is filed with a delay of 21 days to receive an application to restore the original suit. This delay petition, filed under Section 5 of Limitation Act, was dismissed by the trial Court.

7. Curiously the application in I.A.No.1401 of 2004 was filed on 12.03.2004, it was numbered on 16.04.2004 and it was disposed of on 22.03.2010. Similarly, aggrieved by the said orders in I.A.No.1401 of 2004 dated 22.03.2010 this civil revision petition is filed on 13.07.2010. There was no persuasion from the side of petitioner for the last more than a decade. This civil revision petition was also filed with a delay of 42 days and as per the orders dated 25.09.2012 in CRP MP No.5507 of 2012 delay was condoned. Again subsequently, sole respondent died and the petitioner failed to take steps to bring the legal representatives of the sole respondent on to record. Consequently, the civil revision petition was dismissed for default. I.A.No.1 of 2013 (CRP MP No.3749 of 2013) was filed to restore the civil revision petition since the revision petitioner failed to comply the orders dated 19.12.2011, as a result that application was allowed, CRP

was restored on 20.02.2018 subject to payment of cost of Rs.1,000/- within seven days. After restoration, notice was again issued to the respondents. Since the revision petitioner is not diligent in prosecuting the matter, the Registry was directed to list the CRP under the caption 'for dismissal' on 08.11.2022. Under such circumstances, the learned counsel for the revision petitioner has appeared. With this checkered history, it can be safely concluded that the revision petitioner is not at all prudent and there are lack of *bonafides* on his part in prosecuting the matter.

8. In this context, I may refer to the principles laid in **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others**¹ wherein the Hon'ble Supreme Court of India has summarized the principles while dealing with an application under Section 5 of the Limitation Act and held that there should be a liberal, pragmatic, justice-oriented and non-pedantic approach while dealing with an application for condonation of delay and at the same time, the concept of liberal approach has to encapsulate the conception of

¹ 2013(12) SCC 649

reasonableness and it cannot be allowed a totally unfettered free play. If the explanation offered is concocted or the grounds urged in the explanation are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such litigation.

9. Thus, when the facts of case in hand are tested on the touchstone of principles laid by the Apex court in the above decision, the answer is in the negative. The petitioner is not at all diligent at any time either before this Court or before the trial Court. The explanation offered by him to condone the delay appears to be fanciful. In such circumstances, the other side should not be unnecessarily exposed to face such litigation after more than two decades in respect of a suit filed in the year 2001. In that view of the matter, I do not find any merit in the contentions raised by the learned counsel for the revision petitioner and the petitioner has failed to explain the delay to the satisfaction of the Court with sufficient cause. Accordingly, I do not find any irregularity in the order impugned and it is sustained.

10. In the result, the civil revision petition is dismissed as devoid of merits confirming the orders dated 22.03.2010 in I.A.No.1401 of 2004 in O.S.No.1340 of 2001 on the file of learned Principal Junior Civil Judge, Ranga Reddy District at L.B.Nagar. However, in the circumstances of the case, there shall be no order as to the costs. Miscellaneous applications, if any pending, shall stands closed.

A.VENKATESWHARA REDDY, J

17-11-2022
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