

THE HON'BLE SRI JUSTICE M. LAXMAN

CIVIL REVISION PETITION No.5796 of 2010

ORDER:

1. The present revision has been directed against order dated 31.05.2010 in I.A.No.756 of 2004 in ASSR.No.2572 of 2004 on the file of the Principal District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad, wherein and whereby the application filed by the revision petitioner to condone the delay of 48 days in filing the first appeal was dismissed.

2. The facts show that the petitioner, who is a defendant in the suit, filed the first appeal aggrieved by the judgment and decree dated 28.11.2003 in O.S.No.292 of 1998 on the file of the Principal Junior Civil Judge, Hyderabad East and North, Ranga Reddy District. The respondent herein was the plaintiff. The said suit was filed for specific performance of agreement allegedly executed by the revision petitioner in favour of the respondent. The appeal is filed with a delay of 48 days. The averments of the petition show that the delay was on account of financial incapacity and he was making attempt to secure the money to meet the litigation expenses for filing the appeal. It is also pleaded that the respondent herein also filed a criminal case against the revision petitioner and he was defending the said case. On account of multiple litigations, he was mentally disturbed, which impacted on his earning capacity so that he could not meet the litigation

expenses to carry out further proceedings and according to him the delay was not intentional and for the reasons stated above.

3. The respondent opposed the application on the ground that there is no sufficient explanation for the delay. It is also pleaded that the petitioner was having sufficient money to meet the expenses for litigation and the application is filed belatedly.

4. The appellate Court appreciated the pleadings of the petitioner and found that the three reasons, which he have claimed, i.e., pendency of criminal case, mental disturbance and financial incapacity, were not *bona fide* claims, as they have not been established and they are not sufficient grounds to condone the delay of 48 days. Consequently, the application was dismissed. Aggrieved by the same, the present revision has been filed.

5. Heard.

6. Unfortunately, this revision is filed in the year 2010 and nearly for 12 years the revision could not be taken up for hearing. On going through the impugned order, it shows that the first appellate Court has not extended liberal, pragmatic, justice-oriented, non-pedantic approach and dealt with the application in pedantic manner, which is not the substantial justice oriented, which is the ultimate goal of the entire

judicial system. The first appellate Court has also not considered the short duration of 48 days, which condonation do not result any prejudice to other side. If there is an inordinate delay, the doctrine of prejudice will apply. In this regard, it is relevant to refer to the elaborate principles made by the Apex Court in the case of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others**¹, which held as follows:

- i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
- vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.
- viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

¹ (2013) 12 SCC 649

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

7. A glance of the principles laid down by the Apex Court show that when there is a short duration of delay, the doctrine of prejudice will not apply and further the word 'sufficient cause' should be understood that it is basically

elastic one and attempt of the Courts must be liberal, pragmatic and justice-oriented and technical consideration should not come in the way. The appeal is sought to be filed assailing the trial Court judgment, whereunder suit for specific performance was decreed whereby the petitioner, who was the defendant in the suit, was aggrieved by the said decree. As a result of the decree, he has foregone the property, which is the subject matter of the suit. The short duration of 48 days was not convinced to the first appellate Judge. The approach of the first appellate Judge is so pedantic and not justice-oriented and liberal consideration was not extended. The reasons pleaded by the revision petitioner were splitted and those reasons were not satisfied on account of the conclusion drawn by the first appellate Judge. On consolidated seeing of the reasons, what is clear is that the delay was on account of mental disturbance, which impacted the earning capacity of the petitioner, thereby he was driven to vagrancy and unable to gather the amount so as to meet the expenses for taking up the first appeal.

8. Admittedly, there are multiple litigations at the instance of the respondent herein. One is criminal case, another is civil case, which definitely has some bearing on the mental equilibrium of the normal litigant. These things were not considered. The short delay of 48 days was refused to be condoned, which is technical and too pedantic approach. The

principles laid down by the Apex Court were not considered in dealing with the words “Sufficient cause” as contemplated under Section 5 of the Limitation Act. Therefore, the impugned order requires to be set aside.

9. In the result, the civil revision petition is allowed and the impugned order is set aside and consequently, the delay is condoned and the Principal District Judge where the appeal is filed is directed to number the appeal forthwith and dispose of the appeal within six months from the date of numbering.

Miscellaneous petitions, if any, shall stand closed.
There shall be no order as to costs.

M. LAXMAN, J

21.01.2022
ES