

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

C.R.P.No.4872 of 2013

ORDER:

This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, 1908 (for short 'C.P.C.') by the petitioner assailing the order dated 28.10.2013 in IA No.382 of 2013 in OP No.15 of 2011 on the file of the learned Senior Civil Judge, Medak.

2. This application in IA No.382 of 2013 was filed under Section 5 of the Limitation Act by the petitioner to condone the delay of 81 days in filing an application under Order-IX Rule-9 of CPC to restore the OP No.15 of 2011 filed by him for dissolution of marriage. The Court below after careful appreciation of the facts dismissed the said application as devoid of merits holding that the petitioner is not entitled for the relief sought for. Feeling aggrieved by the said orders dated 28.10.2013, the present Civil Revision Petition is filed on the following grounds:

- a) That the lower Court failed to appreciate that the petitioner has been able to explain the

delay of 81 days in filing the application under Order-IX Rule-9 of CPC;

- b) That the petitioner could not attend the Court only due to ill-health on 01.02.2013, thereby the Court below has dismissed OP No.15 of 2011 for default; and
- c) That the trial Court ought to have considered the request of the petitioner to condone the delay, but erroneously dismissed the said application without assigning proper reasons.

3. Heard the learned counsel for the petitioner/husband. The respondent/wife has refused to receive the notice. She was set *ex parte*. Perused the record.

4. The point for consideration is whether the petitioner/husband is entitled for condonation of 81 days in filing the application to set aside the dismissal order dated 19.02.2013.

5. Be it stated that the petitioner herein is the husband of respondent and he has filed OP No.15 of 2011 for dissolution of their marriage. Though it is alleged in his supporting affidavit that on 01.02.2013 the matter was

adjourned for his cross-examination and he could not attend the Court on medical grounds, accordingly, the OP was dismissed for default, the fact remains that on 01.02.2013 the petitioner was present and the respondent/wife was also present, at their request, the matter was adjourned to 05.02.2013. Again from 05.02.2013, it was adjourned to 11.02.2013, to 13.02.2013 and to 18.02.2013. It is only on 19.02.2013 the petitioner failed to proceed with the case in spite of granting sufficient time and that in view of the conditional order, the Court below has dismissed the OP No.15 of 2011. Thus, the contention of the petitioner/husband that on 01.02.2013 since he was not present OP No.15 of 2011 filed by him was dismissed for default, is not correct.

6. On the other hand, it is evident from the material available on record that the trial Court as per the order in IA No.208 of 2012 dated 04.09.2012 directed the petitioner to pay an amount of Rs.1,000/- per month towards maintenance to the respondent/wife and also to pay Rs.1,000/- towards legal expenses but he has failed to

comply with the said order. Though the petitioner appeared as subsequent dates of hearing failed to pay the maintenance amount or the legal expenses as awarded by the trial Court, thereby failed to comply with the said orders and avoided the payment of said amount. It may be stated that as on the date of filing of this application, he is due an amount of Rs.14,000/- to the respondent towards interim maintenance.

7. Therefore, having regard to the said fact that on 19.02.2013, when the petitioner failed to proceed with the case and also failed to comply with the conditional order and also failed to pay the costs imposed by the Court, the trial Court was compelled to dismiss OP No.15 of 2011. It is only after dismissal of OP, the present application is filed to condone the delay of 81 days in filing the application to restore the OP.

8. The law is well-settled that the approach of the Court while dealing with the application under Section 5 of the Limitation Act to condone the delay in filing the application under Order-IX Rule-13 of CPC must be liberal

and elastic rather than narrow and pedantic. At the same time, the party who is at fault cannot be allowed to play delay tactics and protract the litigation deliberately.

9. In this context, I may refer to the principles laid in ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others***¹ wherein the Hon'ble Supreme Court of India while interpreting the provisions of Section 5 of the Limitation Act have summarized the principles. The law consistently laid down by the Apex Court says that the word 'sufficient cause' must be construed liberally to meet the ends of justice without adopting pedantic approach. But, exception to this test to be applied is whether the petitioner has made out a sufficient cause or not? Thus, the Court has to examine the circumstances of each case and if the Court is satisfied that the cause shown by the petitioner is beyond his control, such cause is to be accepted as sufficient cause.

10. On an overall consideration of the entire material available on record and in the facts and

¹ (2013) 12 SCC 649

circumstances stated above, the averments of supporting affidavit appears to be not correct. It is alleged by the petitioner that on 01.02.2013, he could not appear for cross-examination, thereby OP was dismissed for default, but the fact remains that he was present along with the respondent on that day and the matter was adjourned for cross-examination to 05.02.2013, therefrom again on 11.02.2013, 13.02.2013 and finally 18.02.2013. The petitioner/husband remained absent without any representation on 19.02.2013. Accordingly, the OP was dismissed for default as he was not evincing any interest in OP No.15 of 2011. Even as per the averments in the supporting affidavit, the petitioner failed to comply with the conditional order of granting interim maintenance of Rs.1,000/- per month as per the order dated 02.08.2012 in IA No.208 of 2012, Rs.1,000/- towards legal expenses, whereas the respondent/wife has claimed that as on the date of filing of the said application, her husband/petitioner owes an amount of Rs.14,000/-.

11. Thus, when the facts of the case on hand are tested on the principles laid by the Apex Court in the above decision, the answer is in the negative. The petitioner is not entitled for condoning the delay of 81 days in filing the application to restore the OP No.15 of 2011. I do not find any jurisdictional error or irregularity committed by the Court below and the order impugned does not warrant any interference by this Court.

12. In the result, the Civil Revision Petition is dismissed, confirming the order impugned dated 28.10.2013 in IA No.382 of 2013 in OP No.15 of 2011 on the file of the learned Senior Civil Judge, Medak. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, interlocutory applications, if any pending in this revision petition, shall stand closed.

A. VENKATESHWARA REDDY, J.

Date: 09.11.2022
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