

HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

CIVIL REVISION PETITION No.552 of 2020

ORDER:

This revision is filed under Section 115 of the Code of Civil Procedure, 1908 (for short “C.P.C.”) to set aside the order, dated 22.10.2019, in I.A.No.43 of 2017 in O.S.No.42 of 2016 on the file of the Junior Civil Judge, Thungathurthy.

2. Heard learned counsel for the petitioners and the learned counsel for the respondent. Perused the record.

3. The respondent-plaintiff filed the main suit for Perpetual Injunction against the petitioners-defendants. The said suit was decreed *ex parte* on 28.10.2016. While so, the petitioners filed I.A.No.43 of 2017 under Section 5 of Indian Limitation Act, 1963 (for short “ the Act”) read with Section 151 of C.P.C. to condone the delay of (243) days in filing the petition to set aside the *ex parte* decree dated 28.10.2016 stating that petitioner Nos.1 and 2 are brothers and petitioner No.1 was affected with paralysis stroke in the first week of October, 2016 and admitted in Samatha Nursing Home, Janagaon and underwent treatment between 09.10.2016 and

15.06.2017. Petitioner No.2 has also stayed with him at Janagaon during the said period. It is also stated that counsel representing them before the trial Court also met with accident. As such, during their absence, the suit was decreed *ex parte*.

4. The respondent-plaintiff filed counter affidavit resisting the said application.

5. On a consideration of the material on record, the trial Court dismissed the said application vide order dated 22.10.2019 stating that the petitioners failed to show sufficient cause to condone the delay of (243) days in filing the petition to set aside the *ex parte* decree. Challenging the same, the present Civil Revision Petition is filed.

6. A perusal of the record would disclose that the main suit was filed by the respondent against the petitioners and *ex parte* decree was passed against them. The petitioners filed the present application to condone the delay of (243) days in filing the petition to set aside the *ex parte* decree mainly on the ground that petitioner No.1 affected with paralysis and admitted in Samatha Nursing Home at Janagaon and petitioner No.2 attended him. Petitioner No.1 underwent treatment between 09.10.2016 and 15.06.2017 in the said hospital.

In support of their version, they filed medical certificate dated 15.06.2017, which was also marked by the trial Court under Ex.P.1. However, the trial Court has refused to accede to the contention of petitioner No.1 that due to ill-ness and his inability to move, delay as noted was occurred in filing the application.

7. In **N.Balakrishnan v. M.Krishnamurthy**¹, the Apex Court at para Nos.11, 12 and 13 held as under:

“ 11. Rules of limitation are not meant to destroy the rights 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. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up 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 rights 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 in 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 v. Kuntal Kumari* [AIR 1969 SC 575 : (1969) 1 SCR

¹ (1998) 7 Supreme Court Cases 123

1006] and *State of W.B. v. Administrator, Howrah Municipality* [(1972) 1 SCC 366 : 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 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 the 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 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.”

8. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the 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. The words “sufficient cause” under Section 5 of the Act should receive a liberal construction, so as to advance substantial justice.

9. Now, it is to be seen, whether the cause shown by the petitioners can be taken as ‘sufficient cause’ within the meaning of Section 5 of the Limitation Act. It is stated that as petitioner No.1 affected with paralysis stroke, he underwent treatment between 09.10.2016 and 15.06.2017 and subsequently, he attended for ‘Food for work’ for

livelihood and there was delay in approaching the Court to file the present application. However, the certificate filed by petitioner No.1 shows that he underwent treatment for 'Hemi Paralysis', which is not a severe or chronic disease, where he could not attend his routine works. However, keeping in view of the circumstances stated by the petitioners in the affidavit, it would not be proper to take a pedantic approach, while dealing with an explanation for the delay. No doubt, the doctrine has to be applied in a rational common sense pragmatic manner. It is also settled principle of law that between substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. In the circumstances stated by the petitioners, it is presumed that the delay occasioned is neither deliberate nor on account of malafidees or the petitioners can be held guilty of the negligence. There are no circumstances to show that intentionally, the petitioners have delayed in approaching the Court in filing the application.

10. Having regard to the explanation submitted by the petitioners in the affidavit, the trial Court ought to have exercised its discretion in a judicious manner by condoning the said delay, so that the matter can

be adjudicated on merits, especially, when it pertains to valuable rights of the parties in the immoveable property. The impugned order, dismissing the application and refusing to condone the delay, is unsustainable, as the same is not passed in due and proper exercise of discretionary powers and the same is liable to be set aside.

11. In the result, the Civil Revision Petition is allowed. The impugned order is, accordingly, set aside. Consequently, I.A.No.43 of 2017 in O.S.No.42 of 2016 stands allowed. There shall be no order as to costs. Pending miscellaneous petitions, if any, stand closed.

17.02.2023
Nvl

A.SANTHOSH REDDY, J