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CMP.No.9716 of 2023

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in
S.A.SR.No.46069 of 2023

N.MALA,J.

This petition is filed to condone the delay of 4076 days in filing the above Second Appeal in S.A.SR.No.46069 of 2023.

2. In the above CMP, notice was ordered to the respondent on 21.06.2023 and the respondent appeared through counsel and filed counter.

3. The petitioner in the affidavit in support of the petition stated that the certified copy of the judgment and decree were obtained by him on 11.07.2012 and though the Second Appeal ought to have filed on or before 01.06.2012, the same could not be filed in time but was filed with a delay of 4076 days. The reasons cited by the petitioner were that he was suffering from heart ailment and so he was not able to follow up with his Trial Court Advocate on the status of the first appeal. It was only during January 2013, he contacted his lower Court counsel and found out that the appeal was allowed in favour of the respondents. Meanwhile the appeal papers got misplaced in his counsel's office and same were traced only in the month



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of March 2013, and by that time his health again deteriorated and he was advised by his Doctor not to travel outside. The petitioner states that in 2016, he underwent cardiac surgery. While so, some compromise talks were initiated in the presence of the village elders to resolve the dispute and in pursuance of the same he paid Rs.30,000/- to the respondent through one Kabali and the respondent also agreed to withdraw the case. In view of the above talks and believing that the respondent would not prosecute the Second Appeal the petitioner did not take any steps for filing the Second Appeal. It was only during mid February 2020 that the petitioner came to know that respondent was taking emergent steps to implement the preliminary decree for partition. Even before the petitioner could initiate steps to prosecute the Second Appeal, covid pandemic interfered. After the pandemic the petitioners health further deteriorated and he had to undergo open heart surgery in April 2022 to remove the huge blocks in his heart. The petitioner was able to file the appeal only after recuperating from the surgery and hence the delay of 4076 days. According to the petitioner the delay of 4076 days in filing the appeal was neither willful nor wanton, but due to the bonafide reasons narrated above.



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4. The respondent filed counter denying the averments made in the petition.

The respondent stated that the petitioner had failed to substantiate the medical grounds with valid medical records. The respondent further specifically denied as false and misleading the allegations that the petitioner had approached the village elders for compromise and that he paid a sum of Rs.30,000/- to him through one Kabali. The respondent stated that in the absence of sufficient cause the inordinate delay of 4076 days should not be condoned.

5. The learned counsel for the petitioner submitted that due to heart ailment the petitioner could not file the Second Appeal in time and so this Court should take a liberal view and condone the delay of 4076 days. The learned counsel further submitted that the delay was also due to the settlement talks between the petitioner and the respondent. The counsel further submitted that in furtherance of the settlement talks, the petitioner even paid Rs.30,000/- to the respondent through one Kabali with the firm belief that the respondent would not precipitate the matter and that also contributed to the delay.



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6. The learned counsel for the respondent on the other hand submitted that it is trite that each days delay has to be explained. The learned counsel submitted that proper and legally acceptable reasons with sufficient proof have not been adduced to condone the inordinate delay of 4076 days. The learned counsel further submitted that the petitioner has come to Court with unclean hands as the allegation of the petitioner that there were private negotiations and the petitioner paid the respondent Rs.30,000/- was a false allegation and it was specifically denied in the counter. The learned counsel therefore submitted that the petition to condone the delay lacked bonafides and hence it deserved to be dismissed on that ground also.

7. I have gone through the affidavit and the counter. I heard the petitioner as well as the respondent's learned counsels.

8. Before going into the merits of the case, the principles governing the condonation of delay as expounded by the Hon'ble Supreme Court in its latest judgement reported in *2024 SCC OnLine SC 513* will be noteworthy. The Hon'ble Supreme Court in para '26' of the said judgment enunciated the following principles.



“ 26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”



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Keeping the above principles in mind, the reasons given by the petitioner for condoning the inordinate delay of 4076 days are examined. The two fold reasons expressed by the petitioner are that he was suffering from heart ailment and private negotiations were going on between the petitioner and the respondent through the panchayatdars or village elders. In so far as the first reason is concerned, it is seen that there is absolutely no supporting evidence for the heart ailment till 2016. The petitioner in his typed set of papers has produced the Vijaya Medical and Educational Trust discharge summary, which shows that the petitioner was admitted on 01.08.2016 for Coronary Angiography and discharged on 06.08.2016. The other documents relate to off-pump CABG surgery undergone by him on 29.03.2022. In the said document, it is recorded that the petitioner was admitted on 25.03.2022 and discharged on 06.04.2022. Few bills relating to the said surgeries have also been filed in the typed set of papers. It is to be seen, if the said documents would justify the delay on the ground of heart ailment. It is pertinent to note that absolutely no documents have been filed to support the petitioner's contention that he was suffering from heart ailment between March 2013 and 01.08.2016. It is also relevant



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to note here that even for the period from 2016 to 2022, there is no iota of evidence to show that the petitioner had any health issues. So also, no documents are produced to show that the petitioner was involved in private negotiations with the respondent for amicably settling the issue. Further no evidence is filed in proof of the payment of Rs.30,000/- to the respondent through one Kabali. It is also pertinent to note here that the respondent in his counter specifically denied the private negotiations and the payment of Rs.30,000/- through one Kabali. When the respondent had specifically denied the payment of Rs.30,000/- to him, the petitioner was bound to establish the veracity of his claim. As the petitioner has failed to prove the alleged payment, I am of the view that the petitioner has not come to Court with clean hands, as regards the private negotiations between the petitioner and the respondent.

9. In the light of the aforesaid discussions, I am of the view that the petitioner has not made out sufficient cause for condoning the exorbitant delay of 4076 days and also that the petition lacks bonafides as the petitioner has approached the Court with false averments as regards private negotiations and payment of Rs.30,000/- to



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the respondent. The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court reported in 2023 SCC OnLine SC 910 in support of his submission that this Court should adopt a liberal approach for condoning the delay. In my the view the said judgment is not applicable to the facts of the present case, because in the aforesaid case, the delay was only 52 days and in the said context the Hon'ble Supreme Court held that the approach of the Court should not be iron-cast technical approach but should be liberal.

10. The Hon'ble Supreme Court in the case of *Basawaraj and another v. Special Land Acquisition Officer* reported in 2013 (14) SCC 81 has explained what is sufficient cause. Para '15' of the said judgment reads as follows:

“ 15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on this part in the facts and circumstances of the case, or found to have not acted diligently or



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remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay.....”

11. In the facts of the present case, I find that the petitioner has not given any justifiable reasons to condone the enormous delay of 4076 days which is more than 11 years. It is further pertinent to point out here that admittedly final decree dated 09.07.2016 was passed in I.A.No.391/2014 and in pursuance thereof E.P was filed and is pending in E.P.No.70/2018. In the light of the said facts, I am of the view that if the inordinate delay of 4076 days is condoned it will prejudice the respondent. The law of limitation is founded on public policy and is aimed at putting end to litigations within the limitation period, as enshrined in the legal maxim “*interest reipublicae ut sit finis litium*” i.e. it is for the general welfare that a period of limitation be put to litigation. It is trite that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour . The legal maxim



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“*dura lex sed lex*” meaning that the law is hard, but it is the law” is well known.

Therefore in my view, there are absolutely no merits in the petition and the same deserve to be dismissed.

Accordingly, this CMP is dismissed. Consequently the Second Appeal stands dismissed at SR stage.

11.07.2024

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