2021:APHC:465

HIGH COURT OF ANDHRA PRADESH

THURSDAY ,THE SEVENTH DAY OF JANUARY

TWO THOUSAND AND TWENTY ONE

PRSENT

THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO: 4904 OF 2014

Between:

1. Jampala Poornananda Venkateswara Prasad, S/o Syama Sundara Prasad, aged about 55 years,
   R/o Jagarlamudi Village, Tenali Mandal, Guntur District.

...PETITIONER(S)

AND:

1. Roshini Chit Funds and Finance Private Limited, Ali Baig Street, Governorpet, Vijayawada,
   rep. by its G.P.A. Holder, Yelamanchi Venkateswara Rao,
2. Talluri Aruna Kumari, W/o Rama Rao, aged 50 years,
   R/o Sangam Jagarlamudi Village,
   Tenali Mandal, Guntur District.

   (2nd respondent herein is not necessary party to this C.R.P.)

...RESPONDENTS

Counsel for the Petitioner(s): M/S LOTUS LAW FIRM

Counsel for the Respondents: P SREE RAMULU NAIDU

The Court made the following: ORDER

HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

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CIVIL REVISION PETITION Nos.4896 and 4904 of 2014

Between:

C.R.P.No.4896 of 2014

Jampala Poornananda Venkateswara Prasad
... Revision Petitioner

And

Roshini Chit Funds and Finance Private Limited
and 2 others.
... Respondents.

JUDGMENT PRONOUNCED ON 07.01.2021

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? - No -
2. Whether the copies of judgment may be marked to Law Reporters/Journals - Yes -
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? - Yes -

*** THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

+ CIVIL REVISION PETITION Nos.4896 AND 4904 OF 2014

% 07.01.2021

C.R.P.No.4896 of 2014:

Jampala Poornananda Venkateswara Prasad

.... Revision Petitioner

v.

$ Roshini Chit Funds and Finance Private Limited
and 2 others.

.... Respondents

! Counsel for the Revision Petitioner : Sri Challa Dhananjay

Counsel for Respondents: Sri P.Sreeramulu Naidu.

<Gist :

>Head Note:

? Cases referred:

1. 1998 (7) SCC 123
2. 2020 (3) ALD 417
3. 2019 (4) ALD 227
4. AIR 2003 SC 4244
5. AIR 2001 SC 2497
6. AIR 2002 SC 1201
7. 2014 (2) ALD 297
8. (2011) 4 SCC 363
9. AIR 1970 Mys. 34
10. ILR 3 Mad. 271
11. 2013 (2) SCJ 278.
12. 2011 (6) CTC 268
13. AIR 1995 MP 160
14. AIR 1995 P & H 32 (F.B.)
15. AIR 1994 P & H 45
16. (2012) 12 SCC 693
17. (2005) 3 SCC 752

18. 2012 (3) ALT 673
19. 2013 (12) SCC 649
20. [1962]2SCR762

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.4896 and 4904 of 2014

COMMON ORDER:

These two civil revision petitions are filed under Section 115 of the Code of Civil Procedure (for short "C.P.C.") challenging the orders dated 12.11.2014 passed in E.A.Nos.263 and 264 of 2014 in E.P.No.130 of 2007 in O.S.No.418 of 2005 by the Principal Senior Civil Judge, Tenali, whereby the petition filed under Section 5 of the Limitation Act to condone the delay of 721 days in filing petition to set aside exparte order dated 24.04.200 (subject matter of C.R.P.No.4896 of 2014) and the petition filed Under Order XXI Rule 105 and 106 and Section 151 of C.P.C. to set aside the exparte order dated 24.04.2009 (subject matter of C.R.P.No.4904 of 2014), were dismissed.

The petitioner is the Judgment Debtor. The petitioner and the respondents in both the petitions are one and the same and the impugned order passed by the Executing Court in E.A.No.264 of 2014 is a consequential order of E.A.No.263 of 2014. Therefore, I find that it is expedient to decide both the revisions by common order.

During pendency of the revision, respondent No.3 was impleaded as party in both the revisions as per the orders in CRPMP No.2239 of 2015 in CRP No.4896 of 2014 and CRPMP No.2240 of 2015 in CRP No.4904 of 2014.

Affidavit filed in both the petitions is almost one and the same. Therefore, it is condign to extract the relevant portion of the

affidavit for the sake of convenience and for better appreciation, it is extracted hereunder.

> *"D.Hr. filed the E.P. against me for recovery of the E.P.amount. In the above E.P. I filed my counter and posted the matter to 17-7-2009. My wife was suffering with severe disease. I got treatment to my wife at various hospitals in Chennai. In that avocation I could not met my advocate and I did not attend before the Hon'ble Court on 24-04-2009. The Hon'ble Court called me and set exparty. Subsequently, I got treatment to my wife at Hyderabad also. On 18-08-2010, while shifting my wife from Hyderabad to Jagarlamudi through bus, the bus was met an accident and my wife died on spot. Subsequently, my wife was cremated at Jagarlamudi. After that I informed about the case which was filed by the D.Hr. against me only, then the other J.Drs. informed me that they paid total decree amount to the D.Hr. company. I requested the J.Drs. about the receipts, which were given by the D.Hr. company towards decree amount in O.S.418 of 2005. Now, my advocate advised me to file a petition to condone the delay of 721 days for contest the above E.P. I have got fair chances to succeed in the above matter and there is no wilful default or negligence on my part."*

Based on these allegations, the petitioner sought to condone the delay of 721 days in filing petition to set aside exparte order dated 24.04.2009 and to set aside the exparte order dated 24.04.2009.

Respondent No.1 – Decree holder filed counter denying the material allegations made in paragraph No.2 of the affidavit interalia contending that it is the duty of the petitioner to know day to day proceedings in the Court in his particular case and the petitioner did not file any medical certificate in proof of alleged illness of his wife and demise in the road accident. The petitioner has to give explanation what made him to keep silent for 721 days. The explanation offered by the petitioner for the delay of 721 days is not acceptable under law. The reasons urged by the petitioner are not valid and there are no grounds to condone delay of 721 days. In fact, the petitioner is closely observing the day to day Execution

Proceedings. The delay allegedly caused in filing the petitions is not correct, and the petitioner is not entitled to claim any relief and sought to dismiss the petitions.

To substantiate the contention of the petitioner i.e. to explain the delay in filing the petitions, in E.A.No.263 of 2014 the petitioner himself was examined as P.W.1, filed his affidavit under Order XXVIII Rule 4 of C.P.C. and the same was treated as examination in chief. The petitioner marked Exs.P.1 to P.4. None were examined on behalf of the respondents and no documents were marked.

In E.A.No.264 of 2014, no evidence was adduced and no documents were marked either on behalf of the petitioner or on behalf of the respondents.

Upon hearing argument of both the counsel, the Court below recorded a finding that the petitioner failed to prove the delay that caused in filing the petition to set aside the exparte order and that the petitioner was negligent in prosecuting the proceedings being an advocate, dismissed both the petitions.

Aggrieved by the order passed in both the applications, the present revisions are filed mainly contending that when once the Judgment Debtor filed counter in the execution petition, the question of setting him ex parte does not arise in execution proceedings, but the Court below erroneously set the petitioner ex parte. Apart from that, during the pendency of the execution petitions, an opportunity should be given to the Judgment Debtor to contest the execution and to pay any amount either in part or in full, but the Court failed to afford an opportunity to the petitioner –

judgment debtor to contest the matter in accordance with law. When the order setting the judgment debtor ex-parte in execution proceedings is an erroneous order, Court below ought to have recalled the said order and enable the judgment debtor to contest the execution proceedings.

The delay was explained by the petitioner in the affidavit, but the Executing Court did not appreciate the law in proper perspective. It is settled law that the procedure is a handmade of justice and not the mistress of justice. The reason for delay has to be construed liberally, but the Court below adopted pedantic approach, committed an error in dismissing the petition.

The judgment debtor – petitioner was examined as P.W.1 and produced documentary evidence in support of his contentions, but the respondents did not adduce any evidence to rebut the evidence of the petitioner. In those circumstances, the un-rebutted testimony of the petitioner has to be accepted, but the trial Court did not consider the factum of failure to rebut the evidence of judgment debtor in proper perspective.

The petitioner further contended that the order passed by the Court below is contrary to the law laid down by the Apex Court in "***N.Balakrishnan v. M.Krishnamurthy***[1]". On this ground alone, the impugned orders are liable to be set aside, prayed to allow the revisions.

Sri Challa Dhananjay, learned counsel for the petitioner on behalf of M/s Lotus Law Firm vehemently contended that there is

[1] 1998 (7) SCC 123

absolutely no delay in filing the petition since the petitioner had no knowledge about the passing of order and the limitation starts from the date of acquiring knowledge about the ex parte order, that too the respondents played fraud on the judgment debtor as the other judgment debtors satisfied the decree under Exs.P.3 and P.4 on 27.06.2008 and 12.08.2008, but for different reasons, the executing Court proceeded with the execution of the decree and sold the property of the petitioner for meagre amount, despite the pendency of the claim petition filed under Order XXI Rule 58 of C.P.C. Thus, the respondents played fraud on the Court and also against the petitioner. The limitation starts from the date of detecting fraud in execution of the decree, consequently, there is absolutely no delay in filing petition, but the Court below committed grave error in dismissing the petition.

Learned counsel for the petitioner further contended that when the petitioner explained delay though not each and every day, such cause for delay has to be construed liberally without adopting pedantic approach. The delay can be condoned irrespective of length of delay if it is explained by the petitioner and the petitioner is not negligent in prosecuting the proceedings, but the Court did not consider the explanation offered by the petitioner. The evidence adduced by the petitioner is sufficient to substantiate his contention that he was prevented by sufficient cause, but the executing Court failed to appreciate the same in proper perspective and committed serious error in passing order. In support of his contentions, he placed reliance on various judgments of this Court and the Apex Court viz. "***Rachabathuni Govinda Rao v. Golla***

Tirupathi Venkaiah[2]" "***K.Chandra Sekhara Rao v. District Collector, Ranga Reddy District, Hyderabad***[3]" "***Mithailal Dalsanagar Singh v. Annabai Devram Kini***[4]" "***M.K.Prasad v. P.Arumogam***[5]" "***Ram Nath Sao v. Gobardhan Sao***[6]" "***R.Krishna v. R.Bala Narasaiah***[7]"

In the above judgments, the Court considered the scope of Section 5 of the Limitation Act and on the strength of principles laid down in the above judgments, Sri Challa Dhananjay, learned counsel for the petitioner requested to set aside the orders passed by the Court below in both the petitions by allowing these two revisions.

Sri P.Sreeramulu Naidu, learned counsel for the respondents, supported the orders passed by the Court below in all respects while contending that the affidavit filed by the petitioner is bereft of any reasons, much less sufficient cause to condone the abnormal delay of 721 days in filing the petition. Apart from that, the alleged fraud played against the petitioner by the respondents is an invention for the first time before this Court by the counsel appearing for the petitioner and in the absence of any pleadings as required under Order VI Rule 4 of C.P.C. any amount of argument advanced before the Court cannot be looked into. It is further contended that the petitioner though contended that his wife was treated at different hospitals and the petitioner is residing at Ballari, no piece of evidence was produced to substantiate the contention of

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[2] 2020 (3) ALD 417
[3] 2019 (4) ALD 227
[4] AIR 2003 SC 4244
[5] AIR 2001 SC 2497
[6] AIR 2002 SC 1201
[7] 2014 (2) ALD 297

the petitioner i.e. cause for delay in filing the petition, which prevented him from appearing before the Court on the day when the order was passed. When the petitioner failed to substantiate his contention, the abnormal delay in filing the petition cannot be condoned on mere asking and placed reliance on the judgment of this Court in "B.Anasuya v. Vepuri Susheela (CRP No.5922 of 2016) and the judgment of the Apex Court in "***Lanka Venkateswarlu (D) by L.Rs. v State of A.P. and Others***[8]"

Learned counsel for the respondents further submitted that there is no basis for the contention that the Judgment Debtor cannot be set exparte in the execution proceedings and no law says that the judgment debtor cannot be set exparte during pendency of the execution proceedings for realisation of decree debt, consequently the contention is to be rejected.

Considering rival contentions, perusing the material available on record, the point that arises for consideration is:

> ***Whether delay of 721 days in filing petition to set aside the exparte order dated 24.04.2009 either under Section 5 of the Limitation Act or under Order XXI Rule 105 and 106 of C.P.C. be condoned? If not, whether the order passed by the Court below be sustained?***

P O I N T:

The petitioner is claiming condonation of delay in E.A.No.263 of 2014 in E.P.No.130 of 2007 in O.S.No.418 of 2005 (subject matter of C.R.P.No.4896 of 2014).

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[8] (2011) 4 SCC 363

Section 5 of the Limitation Act reads thus:

> "Extension of prescribed period in certain cases. —Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.
>
> Explanation.— The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

To condone delay, the petitioner is required to prove that there was sufficient cause for his non-appearance when the application was called for.

A bare look at the affidavit, which this Court extracted in earlier paragraphs, the first part of the affidavit is that the petitioner could not appear before the Court on 24.04.2009 as he could not contact his advocate on that day. Therefore, the executing Court set him exparte on 24.04.2009. The reason he furnished in the affidavit is that his wife was suffering from various ailments and he got her treated at various hospitals in Chennai. Consequently, he could not contact his advocate due to the treatment of his wife. While returning from Hyderabad after treatment, along with his wife, the bus met with an accident on 18.08.2010, his wife succumbed to injuries on the spot. Thereafter, the dead body was cremated at Jagarlamudi. Later, he came to know about the exparte order through his counsel.

It is clear from the allegations made in the affidavit that on account of treatment of his wife at Chennai and Hyderabad, he could not contact his advocate and appear before the Court on 24.04.2009. If really, the petitioner got treated his wife at Chennai

and at Hyderabad for her serious ailments, she might have been treated either as inpatient or outpatient in private or Government Hospital either at Chennai or at Hyderabad. The hospitals used to maintain case sheets of the patient. To prove that wife of the petitioner was treated either as inpatient or outpatient at Chennai or at Hyderabad, he would have produced at least the certificate issued by the competent Doctor, who treated her or he would have summoned the case sheet from the hospital from Chennai or Hyderabad, but for the reasons best known to the petitioner, except making an allegation that due to treatment of his wife, he could not contact his advocate and appear before the Court on 24.04.2009. A bald allegation was made without disclosing the details of treatment i.e. particularly about the commencement of treatment at Chennai or at Hyderabad, based on such bald allegation, the Court cannot accept that the cause shown by the petitioner is sufficient cause.

The petitioner, to substantiate his case, in E.A.No.263 of 2014, examined himself as P.W.1. In the examination-in-chief, he reiterated the contentions raised in the affidavit. However, in paragraph No.4, there is little improvement of his case i.e. the cause for his non-appearance before the Court. The specific evidence in paragraph No.3 of the affidavit filed under Order XVIII Rule 4 (1) of C.P.C. tends to show that the cause for his non-appearance and failure to contact his advocate was the treatment of his wife at various hospitals at Chennai and Hyderabad. Even in the evidence, he did not disclose the date of commencement of his wife's treatment or conclusion of treatment in the entire examination-in-chief. But in paragraph No.4, there is little improvement that after

the death of his wife, he was in deep depression, therefore, he could not contract his advocate subsequently.

Curiously, the petitioner himself produced a certified copy of the order passed in E.A.No.379 of 2009 in E.P.No.130 of 2007 in O.S.No.418 of 2005, marked as Ex.P.2, which was allegedly furnished by the other judgment debtors to this petitioner, later he came to know about the exparte order passed against him. This plea was not raised in the petition filed under Section 5 of the Limitation Act. Therefore, the improvement that he went into depression after the death of his wife cannot be accepted, though, on account of tragic incident i.e. death of his wife in a road accident, the petitioner being the husband may suffer mental agony and may went into depression, but it was not pleaded. It is settled law that in the absence of any plea, no amount of evidence can be looked into.

Curiously, in the cross-examination P.W.1 admitted that I.P.No.39 of 2010 was filed by one Boddapati Lakshminarayan to adjudge him as an insolvent, the petitioner engaged an advocate and contested the said petition, but did not attend personally. Ex.P.2 is the order in E.A.No.379 of 2009 in the present E.P.. In the said E.P. he received notice, but did not contest while pleading ignorance about the dismissal of E.A.No.379 of 2009 on merits dated 14.03.2011, but obtained certified copy, through R.Anitha, Advocate, who was the counsel for the petitioner in E.A.No.379 of 2009, admitted that he did not file any medical record to establish that the petitioner went into depression on account of death of his wife and also prove the treatment of his wife. The respondents did not adduce any evidence.

One of the grounds urged by the revision petitioner before this Court is that when the petitioner made a statement on oath by filing affidavit and examined himself as witness to substantiate his contention that he was prevented by sufficient cause, it is for the respondents to rebut the same by adducing satisfactory evidence. In the absence of rebuttal evidence, the Court has to accept the evidence adduced by the petitioner and ought to have allowed the petition. But this contention does not stand to any scrutiny for the simple reason that merely because the petitioner was examined as witness, and when he failed to establish the word “sufficient cause”, unrebutted evidence cannot be accepted and such unsubstantiated evidence cannot be looked into.

Even otherwise, the respondents did not enter into the witness box to rebut the evidence of the petitioner even though there are different modes of rebutting the evidence or impeach the trustworthiness of evidence of witness under the Evidence Act.

The initial onus of burden of proof is on the petitioner when he pleaded a particular fact that he got treated his wife for different ailments at Hyderabad and at Chennai, as it is in the exclusive knowledge of the petitioner in view of Section 103 and 106 of the Evidence Act. Unless the petitioner discharged his initial burden of proof, the question of shifting burden to the respondents/decree holder and question of rebuttal evidence does not arise. Cross-examination of a witness is one of the methods to rebut the evidence of a witness or impeach the trustworthiness of a witness. Cross-examination is only to impeach the evidence of witness.

Section 146 of the Evidence Act permits cross-examination of a witness to put any question to test his veracity, to discover who he is and what is his position in life, or to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly. The only exception provided in proviso to Section 146 of the Evidence Act is for the offence punishable under Section 376, Section 376-A, Section 376-B, Section 376-C, Section 376-D or Section 376-E of I.P.C.

The effect of provisions of Sections 146 to 149 of the Evidence Act is that though it is permissible to put a question in cross-examination of a witness to shake his credit by injuring his character, nonetheless, the lawyer must be satisfied that there are reasonable grounds for thinking that the imputation which it conveys is well-founded. (See: Deepchand v. Sampathraj[9])

Sections 132, 146, 147 and 148 of the Evidence Act together embrace the whole range of questions which may properly be addressed to a witness (See: ***The Queen v. Gopal Doss***[10])

Negative fact cannot be proved by adducing positive evidence (See: ***Laxmibai (Dead) through L.Rs. v. Bhagwantbuva (Dead)***[11]).

In view of the provisions contained in the Evidence Act with regard to initial burden of proof, shifting of burden of proof, permissibility to put such questions to test veracity and credibility of a witness, it is for the petitioner to prove the fact, which is pleaded within the exclusive knowledge of the petitioner by adducing cogent and satisfactory evidence i.e. cause which

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[9] AIR 1970 Mys. 34
[10] ILR 3 Mad. 271
[11] 2013 (2) SCJ 278.

prevented him from appearing before the Court and to contact his counsel. But in the present facts of the case, though the petitioner adduced evidence that he got treated his wife at Chennai and Hyderabad, he did not disclose the period of treatment including the first date of commencement of her treatment at Chennai and completion of her treatment at Hyderabad. In the absence of any evidence that he was busy in getting his wife treated at different hospitals for her ailments, it is difficult to accept such bald and unsubstantiated allegation to condone the abnormal delay of 721 of days in filing the petition to set aside the exparte order.

Though the petitioner was examined as witness, produced certain documents, those documents are not sufficient to establish that he was prevented by sufficient cause which is beyond his control to appear before the Court on 24.04.2009, thereby the question of adducing evidence by the respondents to rebut the testimony of P.W.1 does not arise and failure to adduce evidence by the respondents is of no consequence, more particularly, when the petitioner failed to substantiate his contention and his trustworthiness was shaked in the cross-examination regarding treatment of his wife at Chennai and Hyderabad.

One of the major contentions of the petitioner before this Court is that the Court must construe the cause elaborately to meet the ends of justice in a petition filed under Section 5 of the Limitation Act. No doubt, the law declared in catena of perspective pronouncements echoed the same.

The Law of Limitation is derived from two legal maxims i.e. *interest reipublicae ut sit finis litium* which means “in the interest of the state there should be a limit to litigation”, the second

legal maxim is *non-dormeientibus jura subveniunt* which means "the law will assist only those who are aware of their rights and not for those who sleep upon it". The basic requirement of the Indian Limitation Act is that every suit must be filed in the court of law within the prescribed time period in varying cases. The Law of Limitation prescribes the time limit for different suits within, which an aggrieved party can approach, the court for redress or justice. The statute of limitations is a law passed by the legislative body to provide maximum time within which legal proceedings can be initiated. It bars the remedy only.

Section 5 of the Limitation Act is an enabling provision to assist the litigants who enable to file the suit within the given time before the court of law as fixed. The litigants can file appeal/interlocutory application after the expiry of prescribed time/period but have to give reasonable cause that satisfies the court for not filing the appeal or interlocutory application within the prescribed time, by filing an application to condone delay. If the application has not been filed then they can file it later on provided sufficient cause for late filing is shown. This provision is applicable to the proceedings which are pending before the court of law and not applicable to the cases pending before the tribunals. For the enforcement of the decrees, orders executed by the court the petitioners have to file an execution petition before the existing court under the provisions of Chapter - Execution in Part II (Sections 36-74) with Order XXI of the First Schedule of C.P.C.

For filing execution petition, Section 5 is not applicable because it is supposed to be filed within the stipulated time-period. Section 5 of the Indian Limitation Act, 1963 strictly forbids from

diverting any application under this section before the court which says, any appeal or application, other than an application under any provisions of Order XXI of the Code of Civil Procedure, 1908.

The Madras High Court has made an amendment to the Code of Civil Procedure, 1908; new provision was added to sub-rule (3) to Rule 105 of Order XXI which provides various ways to the litigants who satisfies the court with "reasonable cause" for not making the application within the prescribed period as stated by the Madras High Court in the landmark decision of "***N.Rajendra v. Shriram Chits Tamil Nadu Private Limited***[12]"

Similarly, State amendment was incorporated to Order XXI Rule 106 clause (3) of C.P.C. by A.P. Act 104 of 1976 with effect from 01.02.1977. Thus, Section 5 of the Limitation Act is applicable to the proceedings in execution.

Whether the amendment to C.P.C. by incorporating clause (3) of Order XXI Rule 106 of I.P.C. by way of State amendment overrides the bar contained in Section 5 of the Limitation Act, which is the Principal Act governing the limitation, is a question to be decided in appropriate proceedings, but I am not inclined to decide such issue as it was not raised before this Court by either of the counsel.

The language employed in Section 5 of the Limitation Act makes it clear that the legislature had advisedly, left the term "sufficient cause" undefined and un-illustrated for what is sufficient cause in one case may not be so in another case. Thus, the term is kept elastic and unfettered discretion has been conferred on the Courts, to do substantial justices considering facts and

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[12] 2011 (6) CTC 268

circumstances of each case. Though no hard and fast rule can be laid regarding condonation of delay, the Superior Courts and Apex Courts have issued certain guidelines from time to time, as to how the discretion has to be exercised. The sum and substance of the guidelines is that the discretion has to be exercised judicially and the approach of the Court should be liberal and pragmatic but not pedantic. The guiding principle is that justice should not be sacrificed on the alter of technicalities. But, at the same time, Courts should not lose sight of the statutory requirement of 'sufficient cause' and condone delay on equitable grounds. Power to condone delay is discretionary though it has to be liberally construed. The expression 'sufficient cause' in Section 5 of the Limitation Act is adequately elastic to enable Courts to apply law in a meaningful manner to subserve ends of justice. Therefore, it is imperative duty of the Court to decide whether cause shown by the petitioner is sufficient cause i.e. a cause which prevented the petitioner from approaching the Court within the time prescribed under the Limitation Act, as it is a condition set for the Court to exercise discretion in the matter of condoning delay.

In ordinary course, Courts are adopting liberal approach while construing the word 'sufficient cause' to condone delay, exercising discretion that conferred on the Court, but such power has to be exercised judiciously and not mechanically ignoring the negligence of a party in prosecuting the proceedings.

In an application for condonation of delay, it was the duty of appellant to place all necessary materials before the Court explaining the delay showing or disclosing that there has been sufficient cause entitling him for condonation of delay. Enquiry

which the Court was to make was limited only to the points which Court finds relevant was not necessary for the Court to call the witnesses and examine them for condonation of delay when appellant did not make a prayer to the Court that particular witness or witnesses to be called and examined. (See: ***Madhuribai v. Grasim Industries***[13])

In any view of the matter, it is settled law that the Courts shall not adopt pedantic approach and the word 'sufficient cause' is not defined leaving it open to the Courts to construe the same while exercising discretion to stretch the word "sufficient cause" to do complete justice.

Sufficient cause within the meaning of the section must be a cause which is beyond the control of the party invoking the aid of the section and the test to be applied would be to see as to whether it was a bona fide cause, inasmuch as nothing could be considered to be bona fide which is not done with due care and attention. Precisely, the meaning of the words "sufficient cause" and its scope should not be crystallised by any rigid definition (See: ***Smt. Tarawanti v. State of Haryana***[14])

The expression "sufficient cause" should normally be construed liberally so as to advance substantial justice, but that would be in a case where no negligence or inaction or want of *bona fide* was imputable to the applicant. The direction to condone the delay was to be exercised judicially i.e. one of them was not to be swayed by sympathy or be no violence. So where reason assigned in the affidavit accompanying the application not satisfied the test of sufficient cause as envisaged by Section 5 of the Limitation Act.

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[13] AIR 1995 MP 160
[14] AIR 1995 P & H 32 (F.B.)

(Vide: ***Oriental Insurance Company Limited v. Smt.Kailash Devi***[15])

On analysis of the law laid down by the Courts, it is obvious that the word "sufficient cause" must be construed liberally without adopting pedantic approach, but that does not mean that the Court should allow the application considering whatever cause is mentioned in it as 'sufficient cause'. The Courts shall not stretch the word 'sufficient cause' to such an extent to destroy the limitation period prescribed under the Act, if sufficient cause is stretched to such an extent, it amounts to defeating the very object and purpose of the Limitation Act.

Learned counsel for the petitioner relied on several judgments of this Court and the Apex Court. In "***Rachabathuni Govinda Rao v. Golla Tirupathi Venkaiah***" (referred supra), but the principle laid down therein has no application to the present facts of the case as the said order relates to a petition to condone the delay in filing petition under Order XXI Rule 89 and 90 of C.P.C.

In "***K.Chandra Sekhara Rao v. District Collector, Ranga Reddy District, Hyderabad***" (referred supra) the Court held that when the delay was properly explained by the petitioner due to non-supply of copy of the order, the delay has to be condoned. In the facts of the above judgment, the petitioner pleaded lack of knowledge about the exparte order passed by the Court.

In "***B.Madhuri Goud v. B. Damodar Reddy***[16]" the Apex Court held that "condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit.

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[15] AIR 1994 P & H 45
[16] (2012) 12 SCC 693

Length of delay is no matter, acceptability of the explanation is the only criterion."

In "***State of Nagaland v. Lipok AO***[17]" the Apex Court held that proof of sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion.

In "***N.Balakrishnan v. M.Krishnamurthy***" (referred supra) the Apex Court held that what is sufficient cause should be construed liberally. Acceptability of the explanation is the only criterion, length of delay is not relevant. While condoning the delay, the Court should also keep in mind the consequent litigation expenses to be incurred by the opposite party and should compensate him accordingly.

In "***Mohd. Rafiuddhi v. Sri Amruthlal***[18]" this Court held that the inaction or negligence on the part of petitioner in prosecuting the suit is wanton and deliberate and the cause for the delay mentioned in the petition as ill-health is false which cannot be condoned.

In "***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy***[19]" the Apex Court while interpreting the provisions of Section 5 of the Limitation Act regarding condonation of delay, summarised the principles 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

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[17] (2005) 3 SCC 752
[18] 2012 (3) ALT 673
[19] 2013 (12) SCC 649

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 encapsule 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.

(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.

Even if those principles are applied to the present facts of the case, the petitioner did not place any material before the Court including the details as to when his wife was taken to hospital at Chennai and started treatment at Chennai, later at Hyderabad and date of discharge from the hospital etc. Thus, the petitioner made a

vogue allegation without disclosing all details for his absence from the ordinary place of residence. In the absence of any details, the plea set up by the petitioner that he was prevented by sufficient cause, which is beyond his control cannot be accepted and it does not amount to rejection of claim of the petitioner on technical grounds. When the petitioner approached the Court with a specific ground, it is for him to establish the same by producing necessary material disclosing the details of the period of his absence. But for one reason or the other, he failed to do so except making a bald allegation both in the affidavit and in the evidence.

Learned counsel for the petitioner also relied on the judgment of the Apex Court in "***Mithailal Dalsanagar Singh v. Annabai Devram Kini***" (referred supra) where the Apex Court succinctly held that the Courts have to adopt a justice oriented approach dictated by the upper most consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to mis-conduct, disentitled himself from seeking the indulgence of the Court. Even if, this principle is applied to the present facts of the case, it is evident from the conduct of the petitioner that he is negligent in prosecuting the proceedings, in fact, he engaged R.Anitha, Advocate, in claim petition, whereas he contended that he could not contact his advocate. On the other hand, he filed certified copy of the order in E.A.No.379 of 2009 in E.P.No.130 of 2007 in O.S.No.418 of 2005, marked as Ex.P.2 before the Executing Court. This itself is an indication to establish that the petitioner had knowledge about the petition and he is in touch with the advocate, obtained certified copy also.

On an overall consideration of the material on record, the petitioner is negligent in prosecuting the proceedings and adopting dilatory tactics besides negligence, thereby he is disentitled to get the abnormal delay of 721 days condoned.

Learned counsel for the petitioner also relied on another judgment of the Apex Court in "***M.K.Prasad v. P.Arumogam***" (referred supra), where an application was filed under Section 5 of the Limitation Act for condonation of delay in filing application to set aside the ex parte decree was dismissed by the trial Court, and the revision petition filed against the same was dismissed, but the appeal was allowed as no opportunity was afforded to the petitioner, and held that the petitioner though little negligent was not irresponsible litigant, the delay must be condoned.

In "***Ramlal v. Rewa Coalfields Ltd.***[20]" the Apex Court held as follows:

> "Section 5 of the Limitation Act provides for extension of period in certain cases. It lays down, inter alia, that any appeal may be admitted after the period of limitation prescribed therefore when the appellant satisfies the court that he had sufficient cause for not preferring the appeal with in such period. This section raises two questions for consideration. First is, what is sufficient cause; and the second, what is the meaning of the clause "within such period"? With the first question we are not concerned in the present appeal. It is the second question which has been decided by the Judicial Commissioner against the appellant. He has held that "within such period" in substance means during the period prescribed for making the appeal. In other words, according to him, when an appellant prefers an appeal beyond the period of limitation prescribed he must show that he acted diligently and that thee was some reason which prevented him from preferring the appeal during the period of limitation prescribed. If the Judicial Commissioner has held that "within such period" means "the period of the delay between the last day for filing the appeal & the date on which the appeal was actually filed" he would undoubtedly have come to the conclusion that the illness of Ramlal on February 16 was a Sufficient cause. That clearly appears to be the effect of his judgment. That is why it is unnecessary for us to consider what is "a sufficient cause" in the present

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> appeal. It has been urged before us by Mr. Andley, for the appellant, that the construction placed by the Judicial Commissioner on the words "within such period" is erroneous."

If, these principles are applied to the present facts of the case, when the petitioner is gross negligent in prosecuting the proceedings and approached the Court in most casual and callous manner and compelling the Court to exercise discretion to condone delay construing the word "sufficient cause" liberally, is not acceptable.

In "***Ram Nath Sao v. Gobardhan Sao***" (referred supra), the Apex Court laid down the principle that when the appellants were rustic villagers and illiterate, the expression "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to a party.

When sufficient cause is not shown, delay cannot be condoned in view of the law declared by the Supreme Court in "***Lanka Venkateswarlu (D) by L.Rs. v State of A.P. and Others***" (referred supra) held as follows:

> "We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", justice oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation, especially in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any *lis* between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or

> fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers."

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 made out a sufficient cause or not? The Court has to examine the circumstances and if the Court satisfied that the cause shown by the petitioner is beyond his control, such cause is to be accepted as sufficient cause, which prevented the petitioner from appearing before the Court on specified date. If the Court finds that the petitioner is negligent and deliberately protracting the proceedings for one reason or the other, such person is disentitled to claim the benefit of benevolent provision i.e. Section 5 of the Limitation Act.

Coming to the facts of the present case, the petitioner appeared before the Court through his counsel and Execution Petition was posted to 17.07.2009. On account of alleged sufferance of his wife due to ill-health, he shifted his wife to Hospital at Chennai, later to Hyderabad. However, he was set exparte on 24.04.2009. There is little discrepancy in the allegations made in the affidavit on oath. If really, he could not contact his advocate and attend before the Court on 24.04.2009, question of posting the execution petition after filing counter to 17.07.2009 does not arise. The reason assigned by the petitioner is treatment of his wife at Chennai and Hyderabad, but this fact is not substantiated by any piece of evidence. Of course, the death of wife of the petitioner on 18.08.2010 in road accident while returning from Hyderabad to Jagarlamudi, is not in controversy. Even assuming for a moment, whatever he pleaded is true including the treatment and death of

his wife in a road accident, the petitioner filed the petition on 24.04.2014 i.e. almost after 3 years 8 months approximately, but calculated delay as 721 days, the calculation of delay appears to be wrong. Even if, the calculation of delay is correct. No explanation is offered for failure to file a petition immediately after 18.08.2010. One of the developments, he made in the evidence is that he went into depression after the death of his wife. Normally, when a man lost his wife, he may go into depression for few days or months, but not for few years. But, here the delay is more than two years and he did not plead such depression in the affidavit, for the first time, in the evidence, he invented a theory of depression. In the absence of any pleading, the evidence adduced by the petitioner regarding depression cannot be looked into and such improvement is one of the considerations to examine the truth or otherwise in the cause shown by the petitioner.

On an overall consideration of the material on record, the petitioner designedly protracted the proceedings sufficiently long time and caused substantial delay in filing the petition and that he deliberately did not prosecute the proceedings only with an intention to defeat the claim of the decree holder. In such circumstances, the petitioner is disentitled to claim condonation of delay in filing the petition.

Obtaining certified copy in E.A.No.379 of 2009 through his counsel Smt.Anitha is another strong circumstance to disbelieve the cause of the petitioner and attribute knowledge about the pendency of the proceedings. Similarly, the petitioner is an advocate as per the details of the deposition and he used to sign in English. But learned counsel for the petitioner, during hearing, contended that

the petitioner was not an advocate. If the petitioner really is an advocate, he is expected to be more diligent. Even if, the contention of the petitioner is accepted that he was not an advocate, still he appears to be literate, but conveniently did not disclose the details of his occupation or avocation in all these petitions including the long cause title. This itself shows that the petitioner suppressed his personal details. At the same time, in the affidavit filed in E.P.No.130 of 2007 in O.S.No.418 of 2005, the age of the petitioner was shown as 51 years. But in the present revision petition filed in 2014, he was aged 55 years without disclosing the details of his occupation or profession. This intentional omission to disclose the details of his occupation, avocation or profession clearly establishes that the petitioner intentionally avoided to disclose his professional details.

In the affidavit filed under Order XVIII Rule 4 (1) of C.P.C. in lieu of examination-in-chief, the age of the petitioner was shown as 63 years without disclosing the details of his occupation, avocation or profession. Hence, it is evident that the petitioner conveniently suppressed several facts, approached this Court and compelled the Court to exercise discretion to condone abnormal delay in filing petition.

In view of the test laid down in various judgments, when the petitioner is negligent or designedly protracting the proceedings, he is disentitled to claim discretionary relief under Section 5 of the Limitation Act, on this ground alone the petition is liable to be dismissed.

Of course, the Executing Court did not apply this test, but because of the argument advanced by the learned counsel for the

petitioner, this Court is bound to examine this issue applying such test. Hence, on this ground alone the revisions are liable to be dismissed.

One of the contentions raised by the learned counsel for the petitioner before this Court both in the grounds of revisions and during argument is that when once the petitioner appeared before the Court in execution proceedings, the Court cannot set the Judgment Debtor ex parte. This contention is not based on any provision in C.P.C. or law laid down by any of the Courts. However, there is a specific provision i.e. Order XXI Rule 105 and 106 of C.P.C. Order XXI Rule 105 of C.P.C. deals with hearing of application, which reads thus:

> "105.Hearing of application - (1) The Court, before which an application under any of the foregoing rules of this order is pending, may fix a day for the hearing of the application.
>
> (2) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.
>
> (3) Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application ex parts and pass such order as it thinks fit."

The applicant, against whom an order is made under sub-rule (2) rule 105 or the opposite party against whom an order is passed ex parte under sub-rule (3) of that rule or under sub-rule (1) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non-appearance when the application was called on for hearing, the Court shall set aside the order or such terms as to costs, or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application. (Vide: Order XXI Rule 106 of C.P.C.)

If really, the intention of the legislature is not to set the judgment debtor ex parte even for his failure to appear before the

Court, the question of incorporating Rule 106 in Order XXI does not arise.

Order XXI Rule 105 of C.P.C. enables the Court to set the decree holder exparte, dismiss the petition. Similarly, sub-rule (3) of Order XXI of C.P.C. enables the Court to set the judgment debtor exparte, as such the contention of the learned counsel for the petitioner that when once the judgment debtor appeared before the Court, he cannot be set ex parte is without any substance and it is contrary to the provisions contained in Order XXI C.P.C. Hence, the contention of the petitioner is rejected.

In view of my foregoing discussion, I find no ground to set aside the impugned orders passed by the Executing Court and the revisions are liable to be dismissed.

In the result, the civil revision petitions are dismissed. No costs.

The miscellaneous petitions pending in all the revisions, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

07.01.2021
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Note: Mark L.R. Copy.
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