

(2002) 04 AP CK 0117
In the Andhra Pradesh High Court
Case No : C.R.P. No. 919 of 2002

G.R. Satyanarayana

APPELLANT

Vs

The Secretary to Government, General Administration
(Accom.) Department, Govt. of A.P., Secretariat and Another

RESPONDENT

Date of Decision : 12-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 115
Limitation Act, 1963 — Section 5

Citation : (2002) 4 ALT 120

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : P. Shivkumar, for the Appellant;

Final Decision : Dismissed

Judgement

G. Rohini, J.—The plaintiff in O.S.No. 1102 of 1995 on the file of the Court of the V Senior Civil Judge, City Civil Court, Hyderabad, filed this Civil Revision Petition being aggrieved by the order dated 3.10.2001 in I.A.No. 1348 of 2001 condoning the delay of 379 days in filing the application for setting aside the ex parte decree obtained by him.

2. The relevant facts briefly are as follows:

The Revision Petitioner filed O.S.No. 1102 of 1995 against the Government of Andhra Pradesh and the respondents 2 and 3 herein seeking recovery of Rs. 96,800/- by way of damages together with interest 18% p.a. The said suit was decreed ex parte on 28.7.2000 since the defendants failed to file written statements. Thereafter on 6.9.2001 the State of Andhra Pradesh, the first defendant, filed an application under Order 9 Rule 13 of CPC to set aside the ex parte decree along with I.A.No. 1348 of 2000 seeking to condone the delay of 379 days in filing the application under Order 9 Rule 13 of CPC. In the affidavit filed in support of the said petition, the Deputy Secretary to the Government stated that there are about 66 Sections in the General Administration

Department and each section is concerned with the work allotted to it and that there is no separate legal section to look after the legal affairs pertaining to General Administration Department, and consequently the file relating to the present case had to be transmitted from one section to the other resulting in delay in taking necessary steps for filing the written statement. It is also stated that the claim of the plaintiff for damages of Rs. 96,800/- from the 1st defendant-Government is not tenable and there is prima facie case in favour of the Government to succeed in the suit. The said application was contested by the plaintiff by filing a detailed counter denying the averments made in the affidavit filed on behalf of the 1st defendant-Government and contending that the 1st defendant failed to make out any sufficient cause for condoning the inordinate delay in taking steps to set aside the ex parte decree. The Court below on considering the respective contentions of the parties, by order dated 3.10.2001 allowed I.A.No. 1348 of 2001 on condition of the 1st defendant- Government paying costs of Rs. 500/- to the plaintiff on or before 20.11.2001. It is also on record that the costs awarded by the Court below have been paid within the time granted. Aggrieved by the said order dated 3.10. 2001 the plaintiff has come up with the present Civil Revision Petition.

3. I have heard the learned counsel for the petitioner Sri P. Shivkumar, who contended that the reasons stated in the affidavit filed in support of in I.A.No. 1348 of 2001 do not constitute sufficient cause as required u/s 5 of the Limitation Act to condone the inordinate delay of 379 days. He further contends that in the facts and circumstances of the case the Court below is not justified in condoning the delay in seeking to set aside the ex parte decree and therefore pleads to set aside the impugned order.

4. I have perused the order under revision and the material on record.

5. The 1st defendant, who filed application u/s 5 of the Limitation Act, 1963 for condonation of the delay in seeking to set aside the ex parte decree is the State Government. A responsible Officer of the Government has sworn to the affidavit filed in support of the said application stating that there is no separate legal section in the General Administration Department and consequently the file had to be transmitted from one section to the other resulting in taking necessary steps for filing written statement contesting the suit claim. The Court below after considering the circumstances explained in the affidavit, having recorded its satisfaction as to the sufficient cause for the delay in taking the steps, thought it fit to condone the delay on imposing costs of Rs. 500/-.

6. I do not find any reason to interfere with the said discretion exercised by the Court below. It is true that the Limitation Act does not make any distinction between Government and a private individual and for the purpose of "sufficient cause" u/s 5, the Government is not entitled to any special privilege. But keeping in view the public interest involved, the courts shall be liberal in considering the application on behalf of the Government u/s 5. The courts cannot totally ignore the realities in the administrative delays and therefore some what different and

liberal approach is necessary to advance substantial justice to the parties by disposing of the matters on merits. In a catena of decisions, the Apex Court has held that a pragmatic approach should be adopted while exercising the power conferred u/s 5 of the Limitation Act, particularly with reference to a case where the State is an applicant. In *State of Haryana Vs. Chandramani & Others*, after referring to various judgments, it has been held as follows:

When the state is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of altitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented process approach rather than the technical detention of sufficient case for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of pragmatic approach in justice oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis--vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorise the officers to take a decision to give appropriate permission for settlement. In the event of decision to file the appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants."

7. It is also relevant to note the following observations made by the Supreme Court in *Ram Nath Sao @ Ram Nath Sahu & Ors. Vs. Gobardhan Sao & Ors*, the Supreme Court observed thus:

" .. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not

proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

8. For the reasons stated supra, and in the light of the principles laid down by the Apex Court, I am of the view that the Court below has rightly condoned the delay in exercise of the jurisdiction conferred u/s 5 of the Limitation Act. I do not find any force in the contentions raised by the learned counsel for the petitioner and the order under revision does not warrant any interference in Revisional jurisdiction u/s 115 of CPC. It is well settled that once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding much less in revisional jurisdiction unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse (N. Balakrishnan Vs. M. Krishnamurthy)³.

9. The discretion exercised by the Court below in the present case in condoning the delay is neither illegal nor irregular much less arbitrary or perverse. Hence the Civil Revision Petition is liable to be dismissed.

10. The Civil Revision Petition is accordingly dismissed at the stage of admission. There shall be no order as to costs.