

(1999) 06 AP CK 0013

In the Andhra Pradesh High Court

Case No : CMP No. 17314 of 1998 and Batch

Land Acquisition Officer, HUDA, Hyd.

APPELLANT

Vs

A.S. Krishna and Company

RESPONDENT

Date of Decision : 11-06-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Evidence Act, 1872 — Section 115

Limitation Act, 1963 — Section 5

Citation : (1999) 5 ALD 342

Hon'ble Judges : Y.V. Narayana, J

Bench : Single Bench

Advocate : Mr. T. Niranjan Reddy, for the Appellant; Mr. Y. Venkateswarlu, for the Respondent

Judgement

1. CMP Nos.17314 and 17315 of 1998 are the applications filed u/s 5 of the Limitation Act praying to condone the delay of 938 days in filing each of the C.R.Ps. State of Andhra Pradesh is the petitioner in these two applications.

Brief history :--It appears, the government acquired an extent of Ac.25-25 guntas of land belonging to the respondents under the Land Acquisition Act under two separate awards. The Land Acquisition Officer fixed compensation @ Rs.39,900/-per acre. On a reference u/s 18 of the Act, the compensation was enhanced and fixed @ Rs.200/- per square yard and after deductions, the market value was fixed at Rs.160/- per square yard, by the II Additional Judge, City Civil Court, Hyderabad in OP Nos.28 and 445 of 1983. The said award of the civil Court was questioned by Government by filing C.C.C.A.N0.55 of 1987 in this Court. The claimants also preferred cross-objections. This Court by judgment dated 23-3-1990 reduced the compensation amount from Rs.160 to Rs.50/- per square yard. However, this Court awarded interest on additional market value and solatium. Questioning the judgment of this Court, the claimants filed appeal in the Supreme Court in Civil Appeal No.4538 and 4539 of 1991 and the said appeals were dismissed by the Supreme Court on 19-11-1991. Thereafter, the

claimant filed EP Nos.66/1990 and 67/1990. The said E.Ps. were contested by the Government. The executing Court i.e., the learned II Additional Judge, City Civil Court, Hyderabad, passed two identical orders therein on 30-10-1995 holding that claimants-decree holders are entitled to interest on additional market value and solatium. The Government now seeks to file revisions against the said orders in CRP(SR) Nos.58947/1998 and 58941 of 1998 with delay of 938 days in each revision.

2. The explanation given by the petitioner in both the petitions is similar. It is submitted that soon after the executing Court passed the orders, the then Land Acquisition Officer addressed a letter to the then Standing Counsel Sri P.G. Raja Rao, which was acknowledged by him on 14-11-1995, requesting him to obtain certified copies of the order dated 30-10-1995 and also seeking his legal opinion for preferring appeal against the said order, it is submitted that thereafter, one Sri K.Eswaraih, the then Deputy Tahsildar of Huda also pursued the matter with the standing Counsel. However, it seems, neither the legal opinion was given by Sri P.G. Raja Rao nor did he obtain the certified copies of the order of the lower Court. Thereafter, when notices were served in the other two revisions which were preferred by the claimants against the very same order of the lower Court, the petitioner seemed to have addressed another letter on 21-8-1998 requesting the Standing Counsel to give his legal opinion. The Standing Counsel then opined that since the main E.Ps. were still pending, all the issues could be agitated in those E.Ps. Thereafter, it seems, Sri P.G. Raja Rao was replaced by another Counsel. As per the advice of the subsequent Standing Counsel, they requested Sri Raja Rao to give an affidavit to the effect that he did not obtain the certified copies and also did not give the legal opinion. But, Sri Raja Rao replied that he would be able to give the affidavit only after verifying the records. In the meanwhile, i.e., on 30-12-1998, Sri Raja Rao died. It is submitted that the revisions could not be preferred in time only due to the non-receipt of legal opinion and certified copies from their Standing Counsel within a reasonable time. It is further submitted that there are no laches on the part of the petitioner and that the delay is neither wilful nor wanton. Under those circumstances, it is prayed that the delay in preferring the two revisions be condoned.

3. Heard Sri S. Venkata Reddy, learned senior Counsel appearing on behalf of the claimants, who vehemently opposed the petitions contending that the petitioner utterly failed to show sufficient cause for the enormous delay and that this Court need not exercise its power of discretion vested u/s 5 of the Limitation Act. The learned senior Counsel also raised an initial objection about the very maintainability of the petitions. It is submitted that these revisions are the offshoots of the execution proceedings and Section 5 of the Limitation Act has no application either to the execution proceeding under Order XXI CPC or the offshoots of such execution proceedings. It is, therefore, contended that the present petitions for condonation of delay are not maintainable.

4. u/s 5 of the Limitation Act, the Court may condone the delay in filing any

appeal or application, other than the one which is preferred under Order XXI CPC, and admit such appeal or application even after the prescribed period of limitation, provided the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within the period of limitation prescribed under the Act. It is well settled that the power vested in the Court u/s 5 is purely discretionary and this power can be exercised only if there is sufficient cause shown by the appellant or the applicant by giving suitable explanation for the delay. What constitutes "sufficient cause" is not defined under the Limitation Act. But, in *Inder Singh v. Kanshi Ram* AIR 1917 PC 156, it was held that the true guide for a Court to exercise the discretion u/s 5 is to see whether the applicant acted with due and reasonable diligence in prosecuting his case. In *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, , the Supreme Court held that unless want of bona fides of any inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned. In other words, the Court may refuse to condone the delay if it finds that there are no bona fides in the applicant's attempt to show cause for the delay or that the appellant is guilty of either inaction or negligence. However, it is noticed that the Apex Court is always making justifiably liberal approach in condoning the delay. In *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, , the Supreme Court further ruled that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made and that the doctrine must be applied in a rational common sense pragmatic manner. This doctrine is very much diluted by the Supreme Court in subsequent pronouncements by showing liberal approach upon petitions which contain reasonable explanation for the overall delay. While considering this type of applications, time and again, the apex Court also cautioned the Courts below to adopt a justice-oriented approach and discouraged the attempts of the Courts to reject the cases at the very threshold itself on some technicalities without giving an opportunity to the litigant to fight the litigation on merits. In *G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore*, , the Supreme Court further reiterated that the expression "sufficient cause" must receive a liberal construction so as to do substantial justice. It also held that general delays in preferring the appeals are required to be condoned in the interests of justice "where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay." Thus, as per the law laid down by the Supreme Court, general delays can always be condoned but in cases where it is shown that the party seeking condonation of delay acted with gross negligence in prosecuting his case, the Court has always got the discretion which is vested in it u/s 5 to consider the same in its own merits. Further, in litigations to which Government is a party, the Supreme Court showed some more laxity in its approach. The reason is quite obvious. As explained by the Supreme Court in *State of Haryana Vs. Chandra Mani and others*, , in the present system of bureaucratic methodology imbued with note-making, file-pushing and passing-on-the-buck, delay at every stage is unavoidable and such

delays are unintentional and if such delays which are mainly on account of such file-pushings at various levels of the administration, are not condoned, the ultimate sufferers are the public and, therefore, such delays should be condoned by taking liberal approach. While holding so, the Supreme Court condoned the delay of 109 days in preferring the appeal in that case. The above is the position of law on the subject.

5. Now, coming to the merits of the case, it is contended by the learned Standing Counsel appearing for the petitioner, while placing strong reliance upon the aforementioned decision of the Supreme Court in *Haryana v. Chandramani* (supra), and also *N. Balakrishnan Vs. M. Krishnamurthy*, , that since the delay in filing the two revisions was only due to the non-receipt of certified copies from their Standing Counsel within time, there was no occasion for the petitioner to file revisions, within the period fixed under the Limitation Act. It is also contended that there was no negligence on the part of the officials of the petitioner and that the petitioner cannot be made to suffer for the inaction on the part of their Standing Counsel.

6. In this case, the delay is 938 days. As has been held by the Supreme Court, general delays may be condoned by Courts irrespective of the fact whether the petitioner seeking condonation of delay is a private individual or State. Further, in cases where the applicant is the State, the Court must undoubtedly adopt a liberal approach by duly keeping in view the interests of the public at large and the public exchequer. But, that does not mean that the State is free to file applications for condonation with enormous and abnormal delays and without proper explanation for such delays. In my humble opinion, the judgment of the Supreme Court cannot be interpreted in such manner. If the delay is negligible, the Court is not so serious about the stereo-typed explanations which are being offered by the officials of the State and the Court always shows liberal approach in condoning such delays. But, in cases where the delays are enormous, is it not mandatory u/s 5 to explain the delay by giving reasonable and acceptable explanation? Delays which are properly explained only can be condoned but delays which remained unexplained need not be condoned by Courts in exercise of its discretionary power u/s 5. In this case, as already seen, there is an enormous delay of about 938 days in filing the revisions. The explanation offered by the petitioner is that their Standing Counsel failed to obtain the certified copies in time and also failed to render the necessary legal opinion within a reasonable time and, therefore, the delay. Thus, the petitioner chose to throw the entire blame upon their Counsel. Even if it is assumed that the Standing Counsel failed to act appropriately in dealing with the case, then what is that the petitioner is doing? Is it not the duty of the petitioner's officials to see that certified copies and legal opinion are obtained without much loss of time? Of course, the petitioner tried to explain that its officials did pursue the matter but there is no sufficient material which would show that there are constant efforts from the office of the petitioner to obtain the information from their Standing Counsel, excepting the two letters one of which is addressed in November, 1995

and the other one is addressed on 21-9-1998, i.e., nearly three years after writing the first letter. These two letters alone will speak volumes of the diligence with which the officers of the petitioner acted in "pursuing" the case with their Standing Counsel. If really the officials of the petitioner are diligent enough in pursuing the matter as claimed by them, they would at least have waken up when they received notices in October, 1996 in the other two revisions (i.e., CRP Nos.2150 and 2156 of 1996) which are preferred by the claimants questioning the very same order of the lower Court and taken appropriate immediate steps for obtaining the certified copies and legal opinion. But, they waited leisurely till 1998 and simply wrote a letter dated 21-8-1998 (i.e., the second letter) to their Standing Counsel again requesting him to do the needful. But, they never bothered to take any positive step soon after the receipt of notices in the other revisions in the year 1996. There is absolutely no explanation whatsoever for the delay from October, 1996 till 21-8-1998, the date on which they formally addressed the letter to their Standing Counsel and from 21-8-1998 onwards till the date of filing of the revisions. I am of the view that the petitioner in this case has utterly failed to give reasonable explanation for the delay so as to enable this Court to exercise the discretionary power vested in it u/s 5 of the Limitation Act and condone such delay.

7. Learned Government Pleader further tried to contend that they have got strong case on merits and that if the petitions are dismissed on the ground of technicalities, much prejudice would be caused to the interests of the petitioner. But, in a case which is stronger on merits, the balance would tilt in favour of the applicant seeking condonation of delay only if he is able to give reasonable and acceptable explanation for the delay. Therefore, stronger case on merits alone is not a ground to condone the delay. However, even on merits also, I am of the view that the petitioner has no good case. As per the law laid down by the Supreme Court, earlier, Courts used to award interest on additional market value and solatium. But, subsequently, there is a change in the law position and as per the law that is prevailing, interest is not awardable on additional market value and solatium. In this case also, the civil Court awarded interest on additional market value and solatium by duly following the law that was pronounced by the Apex Court. The said decree awarding interest was also confirmed in appeal even by the Supreme Court and thus it became final. Subsequently, the Apex Court held that interest is not awardable on additional market value and solatium. Taking advantage of the subsequent pronouncement of the Supreme Court, the petitioner now sought to contend that the claimants are not entitled to draw interest on additional market value and solatium. But, in my view, the petitioner is estopped from raising such a contention now. An issue which was adjudicated upon by a competent Court of law as per the law which was prevailing as on that date, cannot again be re-opened and readjudicated upon on the ground that the law underwent a change subsequently, for the reason that the issue became final long back and the issue which once attained finality cannot be re-opened. There are no merits in the applications.

8. When coming to the maintainability of the applications, placing reliance upon a decision of this Court in *N. V. Chowdary v. State of Andhra Pradesh* 1997 (6) ALD 128, the learned senior Counsel contended that the present applications being off-shoots of the execution proceedings are not maintainable u/s 5 of the Limitation Act. Thus, the question is whether the applications herein are the off-shoots of execution proceedings or not. The answer, in my opinion, is an emphatic "no". Because, an application u/s 5 of the Limitation Act is an independent petition, which is to be decided on its own merits irrespective of the nature of the main proceeding. It is not an off-shoot of any proceeding. Of course, the revisions in this case are the off-shoots of execution proceedings. But, revision lies u/s 115 CPC against the order passed under Order XXI CPC. Further, u/s 5 of the Limitation Act, there is absolutely no bar to file a petition to condone the delay in preferring revision petition under the provisions of Section 115 CPC. What is prohibited u/s 5 of the Limitation Act is filing of petition to condone delay in making an application under Order XXI CPC. Admittedly, the applications in question are not filed for condonation of delays in making applications under Order XXI CPC. They are, therefore, not the off-shoots of execution proceedings. The decision relied upon by the learned Counsel does not apply to the facts of the present case. In that case, the petitioner wanted to seek review of the order passed in execution petition with a petition to condone the delay. Inasmuch as the review petition is continuation of the original proceeding and it is not an independent proceeding, the learned single Judge rightly observed that the review petition in that case is clearly an off-shoot of the order passed under XXI CPC and, therefore, the petition filed to condone the delay in preferring that review petition is not maintainable. There is absolutely no comparison in between the nature of applications which are filed in this case and the one which is covered by the case relied upon by the learned senior Counsel. For this reason, the contention of learned Counsel is rejected.

9. For the foregoing reasons, I see no merit in the two applications filed by the Government u/s 5 of the Limitation Act. Accordingly, C.M.P. Nos. 17314 and 17315 of 1998 are dismissed. No costs.

C.R.P.Nos.2150 and 2156 of 1996:

These two revisions are preferred by the claimants against the very same identical orders passed by the Court below in E.P.Nos.66 and 67 of 1990.

10. Before the Court below, two points were mainly considered. One is whether the decree-holder is entitled for interest on additional market value and the other point is whether the decree-holder is entitled to calculate interest at compound rate. The first point is held in favour of the claimants. Insofar as the second point is concerned, the Court below categorically held that interest is to be calculated only on principal amount due and not on the total amount of principal and interest as principal does not include interest. The Court below accordingly directed the parties to file fresh calculation memos. I do not see any illegality in the said order of the Court below. There are no merits in the two revisions. The

revisions are accordingly dismissed. No costs.

11. In the result, CMP No.17314 of 1998 in CRP (SR) No.58947 of 1998; CMP No. 17315 of 1998 in CRP (SR) No.58941 of 1999; CRP Nos.2150 and 2156 of 1996 are dismissed. No costs.