

(2019) 07 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No. 15673, 15674 Of 2019(Gm-Cpc)

Nagarathnamma

APPELLANT

Vs

Chandrashekara Swamigalu

RESPONDENT

Date of Decision : 04-07-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 41 Rule 3(A)
Constitution Of India, 1950 — Article 227

Citation : (2019) 07 KAR CK 0006

Hon'ble Judges : Krishna S. Dixit, J

Bench : Single Bench

Advocate : G.S. Balagangadhar

Final Decision : Dismissed

Judgement

1. Petitioners being the respondent Nos. 1 & 2 in an appeal in RA.No.22/2017 filed by the first respondent herein are invoking the writ jurisdiction of

this Court seeking invalidation of the order dated 13.03.2019 a copy whereof is at Annexure- H, whereby the learned II Additional District and

Sessions Judge, Mandya, having favoured respondents I.A.No.1 filed under Order XLI Rule 3(A) of CPC, 1908 on costs, has condoned a delay of

1137 days brooked in filing of the subject appeal.

2. Learned counsel for the petitioners vehemently argues that, the impugned order has a demonstrable error of law on its face inasmuch as such an

inordinate delay could not have been condoned for the reasons stated in the affidavit supporting the application inasmuch as they do not constitute a

sufficient cause at all; while considering the application for condonation of delay, the Court need to look into the merits of the appeal and this having

not been done, is another error apparent on the face of the record; and lastly,

the very same judgment in appeal was the subject matter of another appeal in R.A.No.12/2014 filed by respondent No.7 herein and that the same has already been disposed off on 31.01.2015 and that despite urgement, this having not been adverted to, the impugned order is infected with yet another apparent error.

3. I have heard the learned counsel for the petitioners and I have perused the writ petition papers. I am of the considered opinion that the matter does not merit indulgence at the hands of this Court because:

a) the impugned order is a product of exercise of discretionary power by the Court below and such orders ordinarily are not the subject of deeper scrutiny at the hands of Writ Court exercising jurisdiction under Article 227 of the Constitution of India;

b) the Court below having adverted to all aspects of the matter and the decision of the Apex Court in the case of Ananthnag vs. Mst Katiji AIR 1987

SC 1353 has construed the expression "sufficient cause" for condoning the delay liberally and this cannot be found fault with; in fact, the Apex

Court while decision dated 01.07.2019 in the case of Hemlata Verma Vs. M/s. ICICI Prudential Life Insurance Co. Ltd. & Anr., Civil Appeal No.

5131/2019 at paragraph NO.9 has observed as under:

"9. We may consider it apposite to observe that the Commission while declining to condone the delay placed reliance on the decision of this Court

in Ramlal Vs. Rewa Coalfields Ltd., AIR 1962 SC 36.1 However, the later decision of this Court in Collector, Land Acquisition , Anantnag & Anr.

Vs. Mst. Katiji & Ors., (1987) 2 SCC 107 has held that in matter of condonation of delay, the Court should take liberal view. In our view, the

Commission should have, therefore, taken note of subsequent decisions of this Court on the issue of condonation of delay."

c) going by the huge arrears and pendency of cases, it is not that if the appeal was filed in time, the same could have been heard and disposed off by

the date it has been belatedly preferred; if the appeal was filed in time, the appeal papers would have been stacked in the cup board of the Court

below instead of lying with the appellant or his counsel;

d) the Apex Court in the case of Collector Land Acquisition Vs. Katiji (1987) 2 SCC 107 observed "When substantial justice and technical

considerations are pitted against each other, cause of substantial justice deserves

to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberated delay.â??

It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.â??

It hardly needs to be mentioned that the condonation of delay will not add extra merits to the case of the appellant or rob off any merits of the case of

the respondent ; what ultimately happens is that the matter would be heard on merits where both the parties will have full opportunity to take up their

respective stand; this apart, justice of the case does not merit faltering of the impugned order.

In the above circumstances, these writ petitions are rejected in limine.