
(2002) 10 KAR CK 0059

In the Karnataka High Court

Case No : Civil Petition No. 2014 of 2001 in Regular First Appeal No. 389 of 1994

Smt. Lakkavva Shrimant Holkar

APPELLANT

Vs

Vittappa and Others

RESPONDENT

Date of Decision : 28-10-2002

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2003) 3 KarLJ 72 : (2003) 1 KCCR 202

Hon'ble Judges : B. Padmaraj, J

Bench : Single Bench

Advocate : S.S. Magadum, for Vigneshwar S. Shastri, for the Appellant; E.I. Sanmathi, for O. Mahesh and Veena O. Mahesh for Respondents 1 and 3 to 5, for the Respondent

Judgement

B. Padmaraj, J.—Heard the arguments of the learned Counsels on either side on I. A. No. I of 2001 and carefully perused the case papers including the averments made in the affidavit filed in support of I.A. No. I of 2001 as well as the statement of objections filed by the respondents by way of an affidavit of the 5th respondent.

2. This is an application to condone the delay of about two years in filing the civil petition. The application is seriously opposed by the respondent.

3. In the affidavit filed in support of I.A. No. I of 2001 by the power of attorney holder to the appellant, it is stated that the appellant had engaged Sri S.K. Joshi, Advocate in the appeal R.F.A. No. 389 of 1994 and she was informed by her Advocate that she need not come to Bangalore and the progress of the case would be informed to her through letter. Thus, she was under the bona fide impression that the progress of the case would be informed to her and she need not worry about the same. But, unfortunately, her Advocate Sri S.K. Joshi had died and Court notice was issued to her. Though she was served with the notice, under the bona fide impression, she did not get herself represented. Further, due to her old age and paucity of funds, she was not in a position to understand

the matter or take any steps. Further, she came to know about the dismissal of the appeal when she received a notice in F.D.P. No. 5 of 2001 filed by the respondents 1 to 5. In this view of the matter, the appellant could not even inform her power of attorney holder. But, however, after arranging funds from her well-wishers and after consulting the local Advocate, steps have been taken to file an application for restoration of appeal. In this process, there is a delay in filing the above application. It is further stated therein that if the delay in filing the application for restoration of appeal is not condoned, the appellant will be put to irreparable loss and injury. But, on the other hand, no such hardship or injury will be caused to the other side if the delay in filing the application for restoration of appeal is condoned. This is the explanation offered by the petitioner herein to condone the delay of about two years in filing the civil petition.

4. The respondents have seriously opposed the application of the petitioner by filing objections in writing by way of an affidavit of the respondent 5. In the affidavit, it is stated that the petitioner had preferred the appeal against the judgment and decree dated 30-3-1994 passed in O.S. No. 59 of 1981 on the file of the Civil Judge, Gokak and that the said appeal came to be dismissed for non-prosecution on 5-10-1999 by this Court and that now, the appellant, after a long period of two years and one month has filed the civil petition for restoration of the said appeal along with an application for condoning the delay u/s 5 of the Limitation Act. It has to be stated that the averments in the petition and application for condonation of delay as well as the averments made in the affidavits filed in support of them are all denied and the petitioner is put to strict proof of those averments. Besides denying the averments of the petition and the application, it is also stated therein that the petitioner has admitted that the notice was served twice, once after the death of her Counsel in the regular first appeal and second time when the final degree proceedings were initiated and that this admitted fact itself would show that the petitioner had sufficient notice and in spite of that she slept over the rights for a long time. It is also stated that the petitioner intentionally had not filed the interim applications since there was no merit in her appeal. That, moreover, the petitioner has not shown either sufficient or good cause for the alleged delay. The averments of the petitioner that due to the death of her Counsel she could not file application in time is false and incorrect. The petitioner has not stated whether the office staff of late Sri S.K. Joshi had contacted her or not. The petitioner has stated that she could not understand the notice sent by this Court which runs contrary to her own statement and this reason cannot be believed since the petitioner was aware of the Court procedure for the last two decades as she was contesting the original suit from 1981 and the final degree proceedings. On these and other allegations made in the objection statement, the respondents have sought for the dismissal of the I.A. No. I of 2001 as well as the petition.

5. Learned Counsel for the petitioner, while reiterating the statement of facts made in the affidavit filed in support of I.A. No. I of 2001 has vehemently contended before me that no doubt there were certain laches on the part of the

petitioner. But then, in order to do the substantial justice between the parties, the delay in filing the civil petition may be condoned. He further contended that the petitioner has got very good case on merits and the same should not be lost merely on the ground of delay and laches in prosecuting her remedy before the Court. He also contended that though the petitioner was served with notice, on account of her old age and paucity of funds, she could not take the necessary steps to file the civil petition and that therefore, under the facts and circumstances of this case, the delay in filing the civil petition may be condoned in the greater interests of justice.

6. As against this, the learned Counsel for the respondents has contended before me that there is a delay of two years and one month in filing the civil petition, which on the facts and circumstances of the case cannot be condoned. He contended that the petitioner herein was served twice with notice of proceedings, but in spite of that she slept over the matter. He, therefore, contended that there is total inaction on the part of the petitioner, which in the circumstances of the case cannot be condoned. He, therefore, contended that the application filed by the petitioner may be dismissed.

7. There appears to be no serious dispute that there has been a delay of about two years and one month in filing the civil petition seeking restoration of the appeal, which was dismissed for default. Now, the question is whether the petitioner has made out a prima facie case to condone such an inordinate delay in filing the civil petition. In the instant case, it is not in dispute that after the death of her Advocate, Court notice was issued to the petitioner, which was duly served on her. But, in spite of that she did not venture to appear before this Court or to make necessary arrangement for her representation in the said appeal. According to her, she came to know about the dismissal of the appeal when she received a notice in the final degree proceedings initiated by the respondents 1 to 5, The said statement of the petitioner cannot be accepted on its face value, because, admittedly, the petitioner was served with the notice issued by this Court after the death of her Advocate and in that event, she should have contacted the office of the deceased Advocate and could have come to know of the proceedings. It is not her case that she did not ascertain about the results of the case after the notice was served upon her. Be that as it may, as has been rightly stated by the respondents, the petitioner had been twice alerted in the matter. But, in spite of that she did not think it proper to take appropriate steps to prosecute her remedy before the Court. The yet another explanation offered by the petitioner is that on account of her old age and paucity of funds she could not file the petition in time. It has to be pointed out that both in the appeal as well as in the civil petition, she is represented by her power of attorney. That being so, even assuming that she was old and was not able to make any financial arrangement by herself, she had no difficulty in getting the services of her power of attorney holder in attending the matter, but she did not do so. It would be of some relevance to note here itself that it is the power of attorney holder who has filed the affidavit in support of I.A. No. I of 2001 and

not the petitioner-Smt. Lakkavva. The power of attorney holder has not stated as to what was the difficulty on his part in not filing the petition in time when admittedly he is the power of attorney holder for the petitioner-Smt. Lakkavva. Under the circumstances, therefore, I am of the view that the explanation offered by the petitioner could hardly be said to be a reasonable, satisfactory or even proper explanation for seeking condonation of such inordinate delay in filing the civil petition. It is no doubt true that in the matter of condoning the delay u/s 5 of the Limitation Act, the Court should be liberal and discretion should be exercised in favour of the applicant to advance substantial justice. But, then, the delay is inexcusable unless sufficient and reasonable cause is shown. It is not the law that when an application seeking condonation of delay is filed by the applicant, this Court must invariably condone the delay irrespective of the fact whether sufficient cause is shown or not. In construing Section 5 of the Limitation Act, it is relevant to bear in mind, two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an application or petition gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. That is to say, when the period of limitation prescribed has expired, the decree-holder has obtained a benefit under the law of limitation to treat the delay as beyond challenge and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration, which cannot be ignored is that if sufficient cause for excusing the delay is shown, discretion is given to the Court to condone the delay in filing the application or petition. Section 5 of the Limitation Act gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well-understood and the words "sufficient cause" receiving a liberal construction so as to advance substantial justice when no negligence or inaction nor want of bona fide is imputable to the petitioner. On the face of it, there appears to be no sufficient and reasonable cause to condone the inordinate delay of more than two years in filing the civil petition. It is no doubt true that the law of limitation may harshly affect a particular party. But, then, it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. I am not satisfied that in the facts and circumstances of this case, any explanation, much less a reasonable and satisfactory one had been offered by the petitioner for condonation of the inordinate delay of two years and one month in filing the civil petition. Hence, I am not inclined to condone the delay in filing the civil petition.

8. In the result, therefore, the application I.A. No. I of 2001 filed by the petitioner also stands dismissed as being barred by time. No costs.