

(2008) 03 KAR CK 0044
In the Karnataka High Court
Case No : C.R.P. No. 661 of 2007

Sri Honnurappa

APPELLANT

Vs

R. Masthan

RESPONDENT

Date of Decision : 04-03-2008

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : AIR 2008 Kar 2371 : (2008) ILR (Kar) 2559 : (2009) 4 KarLJ 190 : (2008) 3 KCCR 1787

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Kolar and Kolar, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioner, being aggrieved by the order dated 23.6.2007 passed in Civil Misc. No. Nil/2005 by the I Principal Civil Judge (Jr.Dn) & JMFC Hospet, has presented the instant Civil Revision Petition.

2. Along with the instant revision petition, learned counsel appearing for petitioner has filed I.A. No. I of 2007 u/s 5 of the Limitation Act, for condonation of delay of 36 days in filing the instant revision petition. The said delay has been explained by the petitioner in Para-4 of the affidavit dated 6.11.2007 filed along with the application stating that, he was informed by his counsel in the last week of June 2007 that the miscellaneous petition filed by him was rejected on 23.6.2007 and he has applied for a certified copy of the same on the same day and informed him to come over to Hospet immediately to instruct whether if he wants to challenge the order passed by Court below.

3. Further, he has stated that, petitioner learnt that he has 90 days time to approach this Court and in the meanwhile due to heavy rain in Mumbai and the conditions prevalent in the place where he was residing, he fell very sick and was bedridden from 20.9.2007 and he was diagnosed as having undisclosed viral

fever and advised bed rest about a month. Immediately after recovery from his illness he came over to Hospet on 26.10.2007 and after taking instruction from his counsel he came over to Bangalore on 27.10.2007 and filed the revision and during these process, there is delay in filing the revision petition and the same is bonafide one and not intentional or will full.

4. Further, he stated that, if the said delay is not condoned petitioner would be put to irreparable loss and injury and if the said delay is condoned, no harm would be caused to the other side Therefore, he prayed to condone the delay in filing this petition and to hear the matter on merits.

5. I have heard learned Counsel appearing for petitioner After careful perusal of the statement made by petitioner in para-4 of the affidavit dated 6.11.2007, it emerges that, there is a delay of 36 days in filing this revision petition and petitioner has not shown sufficient cause for the said delay and he has not explained the said delay by assigning cogent reasons, except making a bald statement that he was suffering from viral fever due to heavy rains in Mumbai and the Doctor has advised him bed rest, he has not produced any Medical certificate to that effect. The explanation offered by petitioner for condonation of delay does not inspires the confidence of this Court and much credibility cannot be given to the same. Therefore, in view of non explaining the delay satisfactorily by the petitioner by assigning cogent reasons, I do not find any justification or good grounds to condone the said delay by allowing the application and to hear the matter on merits. Therefore, I.A. No. 1 of 2007 filed by petitioner for condonation of delay is liable to be dismissed as mis conceived. Accordingly, it is dismissed.

6. However, in the interest of justice, I have gone through the order passed by the Trial Court, on the petition filed u/s 152 and 153 of CPC on 23.6.2007. It is significant to note that, in the said petition, petitioner has sought for setting aside the order passed on 24.7.1989 by way of rectifying the order arising out of the accidental slip and restore the suit for disposal in accordance with law, that too, after the lapse of 16 years. The said application is filed as provided under the relevant provisions of CPC if there is a mistake or wrongly typed or there is any mistake in writing or typing and an error arising out of the occurring from an accidental slip or omission is an error due to careless mistake or omission unintentionally made.

7. But in the present case, detailed order has been passed by the Trial Court for rejecting the compromise petition as petitioner has failed to comply the orders of the court and the said suit has been dismissed in view of not adducing or leading any evidence. The Trial Court after evaluation of the relevant materials available on file and with reference to the relevant provisions of CPC and following the decision of the Supreme Court reported in 1966 Supreme Court page 1047 and by assigning cogent and valid reasons has rejected the said petition on merits also.

8. Therefore, I am of the considered view that, in this type of litigation, there should be a finality in the matter, since the matter is pending adjudication from 1986 and petitioner having sufficient time has not chosen to file necessary application under the relevant provisions to set aside the order dated 24.7.1989 and after the lapse of nearly one and half decades, has chosen to file the petition and the same has been rightly rejected by the Trial Court Therefore, on merits also, petitioner has not made out any good grounds to interfere in the order passed by the Trial Court.

9. Having regard to the facts and circumstances of the case as stated above, the revision petition filed by petitioner is dismissed on the ground of delay and laches as also on merits. Ordered accordingly.