Lanka Venkateswarlu (D) By Lrs vs State Of A.P. & Ors on 24 February, 2011

Equivalent citations: AIR 2011 SUPREME COURT 1199, 2011 (4) SCC 363, 2011 AIR SCW 1459, 2011 AIR CC 1061 (SC), AIR 2011 SC (CIVIL) 681, (2011) 5 MAD LJ 167, (2011) 4 MAH LJ 104, (2011) 2 ICC 515, (2011) 2 SCALE 703, (2011) 1 CLR 833 (SC), (2011) 1 ALL RENTCAS 660, (2011) 112 CUT LT 152, (2011) 3 MPLJ 135, (2011) 2 CAL HN 130, (2011) 1 CURCC 212, (2011) 3 MAD LW 26, (2011) 86 ALL LR 59, (2011) 3 ALL WC 2295, (2011) 2 CIVILCOURTC 13, (2011) 1 WLC(SC)CVL 546, (2011) 3 CIVLJ 494, 2011 (1) GLR NOC 7 (SC), 2011 (2) KCCR SN 124 (SC), (2011) 5 BOM CR 857

Author: Surinder Singh Nijjar

Bench: Surinder Singh Nijjar, B.Sudershan Reddy

REPORTABL

E

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2909-2913 OF 2005

Lanka Venkateswarlu (D) by LRs. .. Appellants

VERSUS

State of A.P. & Ors ..Respondents

J U D G M E N T

SURINDER SINGH NIJJAR, J.

1. These appeals are directed against the order passed by a Division Bench of the High Court of Judicature of Andhra Pradesh at Hyderabad in CMP Nos. 21114, 21115, 21116, 21117 and 21118 of 2003 dated 19th August, 2003. By the aforesaid order, the High Court has allowed all the petitions/applications.

2. In the applications/petitions, respondent No.3, herein, had sought the following directions:-

"

CMP No. 21114/2003: Petition under Order 22 Rule 4 of the CPC praying that in the circumstances stated in the affidavit titled therewith, the High Court will be pleased to permit the petitioners to bring the above stated persons as legal representatives of the deceased sole respondent in Appeal No. 8 of 1985 on the file of the High Court.

CMP No. 21115/2003: Petition U/s praying that the High Court may be pleased to set aside the dismissal Order dated 6.2.98 in AS No.8 of 1985 and to restore the appeal to file.

CMP No. 21116/2003: Petition Under Order 9 Rule 9 read with section 151 CPC, praying that the High Court may be pleased to set aside the abatement caused due to the death of sole respondent i.e. Lanka Venkateswarlu.

CMP No. 21117/2003:

Between Sri D.E.V Apparao ...Petitioner/impleaded Petitioner in AS No.8 of 1985 on the file of High Court And:

1. The State of A.P. rep. by District Collector, Visakhapatnam.

2. The Tahsildar, Visakhpatnam ...Respondent/Appellants

3. Lanka Venkateswarlu (died) ...Respondent Petition under Order 1 Rule 10 CPC, prays this Hon'ble Court may be pleased to permit the petitioners society to be impleaded as and 2 in AS. 8 of 1985 on the file of the Hon'ble Court to prosecute the appeal.

CMP No. 21118/2003: Petition U/s 5 of Limitation Act praying the High Court may be pleased to condone the delay of 883 days in filing the petition seeking to set aside the dismissal order dated 6.2.1998.

These petitions coming on for hearing, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Govt. pleader for Appeal for Petitioners in CMP Nos. 21114, 21115, 21116, 21118 of 2003 and of Mr. K. Sarva Bhouma Rao, Advocate for petitioner in CMP

No. 21117 of 2003 and of Mr. M.S.R. Subramanyam, Advocate for the respondents in CMP Nos. 21114, 21115, 21116, 21118 of 2003 and G.P. for Appeal for the respondents in CMP No. 21117 of 2003."

3. We may now briefly notice the relevant facts as stated in the pleadings of the parties and the impugned order of the High Court. The predecessor of the appellants, i.e., Shri Lanka Venkateswarlu, (hereinafter referred to as `original plaintiff'), brought a suit O.S. No. 72 of 1979 before the subordinate judge Visakhapatnam for the declaration of his title as the absolute owner of the suit schedule property and for permanent injunction restraining respondents Nos. 1 and 2 from interfering with his peaceful possession. The suit schedule property, to the extent of 2 acres was, according to the original plaintiff, covered by survey No. 73/12 in Thokada village.

He had purchased the suit schedule property by a registered sale deed dated 15th July, 1961 from one Gonna Appanna son of Venkataswamy of China Gantyda village. The original plaintiff was constrained to file the aforesaid suit on coming to know that respondent Nos. 1 and 2 were claiming the suit schedule land to be "banjar land" which vested in the Government. He had also learned that the land was in imminent danger of being illegally alienated by the respondent Nos. 1 and 2. They were claiming that the land was required to issue Pattas to weaker sections of society.

4. Respondent Nos. 1 and 2 were impleaded as the defendants to the suit. Subsequently, the suit was transferred to the Court of IVth Additional District Judge, Visakhapatnam and renumbered as O.S. No. 83 of 1981.

5. The aforesaid averments of the original plaintiffs were controverted by the respondent Nos. 1 and 2. It was claimed that the plaint schedule property was not covered by old survey No. 73/12 of the original village of Thokada. The boundaries as well as survey number were stated to be fictitious, forged and imaginary. Even the ownership of the ancestors of the vendor of the original plaintiff of the suit schedule land was denied. Further, the alleged sale deed dated 15th July, 1961 between the original plaintiff and the vendor was denied. It was also stated that the original plaintiff was not in possession and enjoyment of the plaint schedule property.

6. On the pleadings of the parties, the trial court framed six issues. Issue No. 1 pertains to the title of the original plaintiff to the schedule property. Issues No.2 & 3 were with regard to, whether the original plaintiff was entitled to relief of declaration and injunction as prayed for. Issue No.4 was whether the suit is not maintainable.

A perusal of the judgment of the trial court shows that the suit was hotly contested on each and every issue.

Issues 1, 2, 3, 4 and 6 were decided in favour of the original plaintiff and against the defendants, i.e., respondent Nos. 1 and 2. Issue No.5 with regard to valuation of the suit was not pressed by the government pleader. The suit was decreed by judgment dated 24th September, 1982.

7. The respondents challenged the aforesaid judgment and decree by filing an appeal before the High Court of Andhra Pradesh being A.S. No. 8 of 1985. The sole respondent, i.e., original plaintiff died on 25th February, 1990. Therefore, the Advocate appearing for the deceased original plaintiff being the `sole respondent' in the appeal filed a memo before the High Court giving intimation about the death of his client. The memo was filed after giving notice to the advocate for respondent Nos. 1 and 2, who were appellants in the aforesaid appeals. In spite of such intimation, respondent Nos. 1 and 2 failed to bring the legal representatives of the deceased original plaintiff on record.

8. From the judgment of the High Court it is apparent that the appeal came up for hearing on 24th April, 1997.

At that stage, the counsel for the appellants again brought to the notice of the Court that his client has passed away on 25th February, 1990. The High Court directed the government pleader to take steps to bring on the record the legal representatives of the original plaintiff and posted the matter for hearing on 16th June, 1997. It appears that no actions were taken by the respondents to comply with the order passed by the High Court on 24th April, 1997. Therefore, on 6th February, 1998, Justice V. Rajagopala Reddy, J. passed the following order:-

> "Appeal under Section 96 CPC against the order of the Court of the IV Addl. District Judge, Visakhapatnam dt.24.09.1982 in O.S. No. 83/81.
>
> This appeal coming on for orders under Rule 64 of the Appellate Side Rules of the High Court on the failure of the Appellant herein.
>
> 1. To take steps to bring on record the LRs. of the deceased sole respondent.
>
> In the presence of G./P. for Excise for the Appellant and of Mr. M.S.R. Subramanyam, Advocate for the respondent No.1. It is ordered as follows:
>
> 1. That the Appellant do within one week from the date of this order comply with the requisitions of the Office referred to above and;
>
> 2. That in default of compliance with the said requisitions within the time prescribed in clause 1 supra, the Appeal shall stand dismissed as against the sole respondent herein."

9. The aforesaid order was admittedly not complied with. Consequently, the appeal stood abated in terms of the order dated 6th February, 1998. It appears that thereafter CMPSR No. 49656 of 2000 was moved by respondent Nos. 1 and 2 seeking condonation of 883 days delay in filing the petition to set aside the dismissal order dated 6th February, 1998. The application was accompanied by an affidavit where it is candidly admitted by respondent No.2 that the order dated 6th February, 1998 was not complied with. It was further admitted that as the order dated 6th February, 1998 was not complied with, the default order came into force and the appeal stood dismissed.

10. In this affidavit, the explanation given is that the predecessors of the officer, who affirmed the affidavit dated 11th July, 2000 came to know about the dismissal of the appeal during the course of investigation in original O.S. No. 6 of 2000 which had been filed by the widow and the children of the deceased original plaintiff, i.e., sole respondent in the appeal. It is also admitted that thereafter, an application was filed for setting aside the order of abatement dated 6th February, 1998, but, without any application seeking condonation of delay of 883 days in filing the petition. To cover the foresaid lapse, CMP No. 21118 of 2003 was filed seeking condonation of delay of 883 days in filing the petition.

11. Thereafter CMPSR No. 58644 of 2000 was filed on 17th August, 2000 with a prayer to condone the delay of 3703 days to bring the legal representatives on record.

CMPSR No. 58646 of 2000 was filed to bring the legal representatives of the deceased original plaintiff on record and CMPSR No. 58645 of 2000 to set aside the order of dismissal in AS No. 8 of 1985 dated 6th February, 1998 was filed. These applications were subsequently numbered as noted in the heading of the impugned judgment.

12. It appears from the impugned order of the High Court and CMPSR No. 58644 of 2000 was numbered as CMP no. 17186 of 2000 on 17th August, 2000 and listed before the Court on 27th September, 2000. The High Court granted two weeks time for filing the counter. The aforesaid CMP was posted for hearing before the bench on 16th October, 2000 (Venkatanarayan,J.). At that time, counsel for the deceased original plaintiff submitted that his client had died in 1990 and he had no instructions.

Therefore, the Court directed to issue notice to the parties on the petition. Even at that stage the government pleader did not bring to the notice of the Court that the applications filed by respondent Nos. 1 and 2 to set aside the order of dismissal and to bring the legal representatives on record were pending consideration.

13. Thereafter it appears the matter was adjourned on a number of occasions from 27th June, 2001 to 9th April, 2002. Surprisingly, on 3rd June, 2002 the government pleader again took time from the Court to verify whether any separate application was filed for restoration of the appeal and whether any such application was pending or not. Thereafter the matter was not pursued by the government pleader.

14. In the meantime, the alleged beneficiaries to whom Pattas had been granted by the Government Poramboke in the year 1979 filed CMP No. 21705 of 2000, seeking permission of the Court to come on record as the third appellant in the appeal. In the impugned order, it is also pointed out that the pendency of the applications had come to the notice of the Court intermittently. It appears that the application to condone the delay in filing the petition for setting aside the order of dismissal was filed, when the lapse was pointed by the Court.

15. Thereafter, it seems that without the adjudication of any of the applications on merits, the appeal was listed for hearing before the Bench, which culminated into passing the judgment and order

dated 19th August, 2003, subject matter of the present appeal. By the aforesaid judgment, the High Court has allowed all the applications restored the appeal posted it for hearing on 25th August, 2003.

16. This Court while issuing notice in the SLP on 15th December, 2003 directed that "in the meantime, proceedings in the appeal pending in the High Court shall remain stayed". Therefore, it is evident that the situation today is as it was when the order was passed on 6th February, 1998, i.e., appeal filed by the respondent Nos. 1 and 2 stood abated and hence dismissed.

17. We have heard the learned counsel for parties.

Mr. P.S. Narasimha, senior advocate, appearing for the appellant submitted that the impugned order of the High Court cannot be justified on any legal ground. He submits that the High Court having itself recorded the utter negligence of the respondents in pursuing the appeal at every stage, without any justification, condoned the delay. The learned senior counsel pointed out that there was no explanation, much less any plausible explanation to justify the delay of 3703 days in filing the application for bringing on record the LRs. of the sole respondent or for the delay in filing the application for setting aside the order dated 6th February, 1998. It was further submitted that there was no justification to permit the respondent No.3 to be impleaded as a party in the appeal. Learned counsel relied on the judgment of this Court in the case of Balwant Singh (dead) Vs. Jagdish Singh1 in support of the submission that the law of limitation has to be enforced in its proper prospective. Even though the Courts have power to condone the delay, it can not be condoned without any justification. Such an approach would result in rendering the provisions contained in the Limitation Act redundant and inoperative.

18. On the other hand, learned counsel for the respondents relied on the judgments of this Court in the case of N. Balakrishnan Vs. M. Krishnamurthy2 , Mithailal Dalsangar Singh & Ors. Vs. Annabai Devram Kini & Ors.3 and Sardar Amarjit Singh Kalra (dead) by LRs Vs. Pramod Gupta (dead) by LRs.4 and submitted 1 (2010)8 SCC 685 2 (1998) 7 SCC 123 3 (2003) 10 SCC 691 4 (2003) 3 SCC 272 that the High Court in condoning the delay has merely advanced the cause of substantial justice.

19. We have considered the submissions made by the learned counsel. At the outset, it needs to be stated that generally speaking, the courts in this country, including this Court, adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act.

This principle is well settled and has been set out succinctly in the case of Collector, Land Acquisition, Anantnag & Ors. Vs. Katiji & Ors.5

20. In the case of M. Balakrishnan (supra), this Court again reiterated the principle that rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics, but seek their remedy promptly.

5 (1987) 2 SCC 107

21. In the case of Sardar Amarjit Singh Kalra (supra), this Court again emphasized that provisions contained in the Order 22 CPC were devised to ensure continuation and culmination in an effective adjudication and not to retard further progress of the proceedings. The provisions contained in the Order 22 are not to be construed as a rigid matter of principle, but must ever be viewed as a flexible tool of convenience in the administration of justice. It was further observed that laws of procedure are meant to regulate effectively, assist and aid the object of doing a substantial and real justice and not to foreclose even adjudication on merits of substantial rights of citizen under personal, property and other laws.

In the case of Mithailal Dalsangar Singh and Ors. Vs. Annabai Devram Kini & Ors, (Supra), this Court again reiterated that in as much as abatement results in denial of hearing on the merits of the case, the provision of an abatement has to be construed strictly. On the other hand, the prayer of setting aside abatement and the dismissal consequent upon abatement had to be considered liberally. It was further observed as follows:-

> "The Courts have to adopt a justice oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court."

22. The concepts of liberal approach and reasonableness in exercise of the discretion by the Courts in condoning delay, have been again stated by this Court in the case of Balwant Singh (supra), as follows:-

> "25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation."
>
> "26. The law of limitation is a substantive law and has definite consequences on the right and obligation of party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

23. Let us now examine as to whether the High Court was justified in condoning the delay in the peculiar facts of the presence case. The High Court in its judgment records the following conclusions:-

> "(1) The Government Pleader having filed the appeal on 18.2.1983 has taken three long years to get the appeal numbered. (2) The sole respondent died in 1990. The learned counsel for the respondent submits that he served a letter on the learned Government Pleader bringing to his notice about the death of his client in 1990 itself.

Since the letter is not traced we are not giving much importance to that fact. But at the same time this fact was brought to the notice of the Government Pleader on 24.2.1997 when the appeal was listed for hearing.

(3) Even though the Court gave sufficient time the Government Pleader has not taken any steps to bring LRs. on record.

(4) After one year the Court passed a Conditional Order on 6.2.1998 and the appeal was dismissed for not bringing the LRs. on record.

(5) After two more years the concerned officials of the Government and the Government Pleader in office at the relevant point of time, filed some applications, which are not in order.

(6) Even then they have not bestowed any attention either to comply with the defects in filing the application or in getting the orders are passed on these applications. But at the same time they went on taking time without knowing for what purpose they were taking time.

In the result an appeal which would have been disposed of in 1997 remained pending all these years mainly due to the negligence on the part of the Government Pleader in office.

Thereafter at the two stages, the High Court records that:-

> "In the normal course we would have thrown out these applications without having second thought in the matter....."

> "We have already observed that in the normal course we would have dismissed the applications for severe latches on the part of the appellants and their counsel."

24. Having recorded the aforesaid conclusions, the High Court proceeded to condone the delay. In our opinion, such a course was not open to the High Court, given the pathetic explanation offered by the respondents in the application seeking condonation of delay.

25. This is especially so in view of the remarks made by the High Court about the delay being caused by the inefficiency and ineptitude of the government pleaders.

The displeasure of the Court is patently apparent from the impugned order itself. In the opening paragraph of the impugned order the High Court has, rather sarcastically, dubbed the government pleaders as without merit and ability. Such an insinuation is clearly discernable from the observation that "This is a classic case, how the learned government pleaders appointed on the basis of merit and ability (emphasis supplied) are discharging their function protecting the interest of their clients". Having said so, the High Court, graphically narrated the clear dereliction of duty by the concerned government pleaders in not pursuing the appeal before the High Court diligently. The High Court has set out the different stages at which the government pleaders had exhibited almost culpable negligence in performance of their duties. The High Court found the justification given by the government pleaders to be unacceptable. Twice in the impugned order, it was recorded that in the normal course, the applications would have been thrown out without having a second thought in the matter. Having recorded such conclusions, inexplicably, the High Court proceeds to condone the unconscionable delay.

26. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.

The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections can not and should not form the basis of exercising discretionary powers.

27. The order of the High Court, in our opinion, is based purely on the personal perceptions and predilections of the Judges on the bench. The latent anger and hostility ingrained in the expressions employed in the judgment have denuded the judgment of impartiality. In its desire to castigate the government pleaders and the Court staff, the High Court has sacrificed the "justice oriented approach", the bedrock of which is fairness and impartiality. Judges at all levels in this country subscribe to an oath when entering upon office of Judgeship, to do justice without fear or favour, ill will or malice. This commitment in form of a solemn oath is to ensure that Judges base their opinions on objectivity and impartiality. The first casualty of prejudice is objectivity and impartiality. It is also well known that anger deprives a human being of his ability to reason. Judges being human are not immune to such disability. It is of utmost importance that in expressing their opinions, Judges and Magistrates be guided only by the considerations of doing justice. We may notice here the observations made by a Constitution Bench of this Court in the case of State of U.P. Vs. Mohammad Naim , which are of some relevance in the present context. In Paragraph 11 of the

judgment, it was observed as follows:-

> "If there is one principle of cardinal importance in the administration of justice, it is this: the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by any body, even by this Court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair-play and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;
>
> (b) whether there is evidence on record bearing on that conduct, justifying the remarks; and
>
> (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

6 (1964) 2 SCR 363

28. We are of the considered opinion that the caustic remarks made by the High Court, against the government pleaders and the Court staff clearly exhibits a departure from the principles quoted above.

29. We are of the considered opinion that the judgment of the High Court is unsustainable either in law or in equity. Consequently, the appeals are allowed. The impugned judgment of the High Court is set aside with no order as to costs.

.....J. [B.Sudershan Reddy] .....J. [Surinder Singh Nijjar] New Delhi;

February 24, 2011.