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UMMER

v.

POTTENGAL SUBIDA & ORS.

(Civil Appeal Nos. 2599-2600 of 2018)

B

MARCH 08, 2018

**[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]**

C *Limitation Act, 1963 – s.5– “Sufficient cause” –Ex-parte decree passed against the appellant – Application filed by appellant for setting aside the same along with application for condonation of delay in filing the application, dismissed– Appeal filed by appellant before High Court along with application u/s.5 praying for condonation of delay of 554 days in filing the said appeal– High Court dismissed the appeal as well as the application for condonation of delay– On appeal, held: It is not disputed that D appellant is an old man and that he suffered heart disease during the relevant period and was later down with dengue fever– It is further not disputed that he was also mentally disturbed due to disputes going on in his family – Cause shown by appellant, for condoning the delay in filing the appeal before High Court, relating E to his prolonged illness during the period in question was a sufficient cause within the meaning of s.5– High Court should have taken liberal view in the matter and condoned the delay in filing the appeal– Delay of 554 days in filing the appeal before High Court is condoned, subject to costs of Rs.10,000/- – Code of Civil Procedure, 1908– Or. IX, r.13– Costs.*

F

**Allowing the appeals, the Court**

**HELD: 1.1** The cause pleaded by the appellant related to his prolonged illness during the period in question. The appellant also filed medical documents to support the factum of his illness during the relevant time. It is not in dispute that the appellant is G an old man and in his late sixties. It is also not in dispute that he did suffer heart disease during the relevant period and later he was down with dengue fever. It is also not in dispute that he was hospitalized to get medical treatment for these two ailments for a long time during that period. It is also not in dispute that he was H mentally disturbed due to disputes going on in his family and was

not able to attend to his day-to-day duties due to his old age and prolonged ailments. [Paras 14, 15] [599-F-G] A

1.2 The High Court did not dispute the genuineness of these facts and nor disputed the genuineness of the documents filed by the appellant in support of the cause pleaded. On the other hand, the High Court found as a fact that the appellant did suffer these ailments. In the light of the aforementioned undisputed facts, the High Court should have taken liberal view in the matter and held the cause shown by the appellant as “sufficient cause” within the meaning of Section 5 of the Limitation Act, 1963 and accordingly should have condoned the delay in filing the appeal. One cannot now dispute the legal proposition that the earlier view of this Court that the appellant was required to explain the delay of each day till the date of filing the appeal has since been diluted by the later decisions of this Court and is, therefore, held as no longer good law. [Paras 16-18] [599-H; 600-A-C] B C

1.3 Having regard to the totality of the facts and circumstances of the case and the cause shown by the appellant, which is duly proved by the documents, the cause shown by the appellant for condoning the delay in filing the appeal before the High Court was/is a sufficient cause within the meaning of Section 5 of the Limitation Act and, therefore, the application filed by the appellant for condonation of delay of 554 days in filing the appeal deserves to be condoned, subject to the appellant paying cost of Rs.10,000/- to respondent No. 1. The appeal is held to have been filed within limitation. It is accordingly restored to its original number. [Paras 19, 20] [600-D-F] D E F

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2599-2600 of 2018.

From the Judgment and Order dated 16.11.2016 of the High Court of Kerala at Ernakulam in Mat. Appeal No. 653 of 2016 and C.M. Appl. No.1986 of 2016 in Mat. Appeal No. 653 of 2016 respectively. G

Deepak Prakash, Bineesh K., Subhash Choudhary, Ms. Athira G. Nair, Ranvee Dahiya, Nachiketa Vajpayee, Ms. Sree Devi, P. V. Dinesh, Advs. for the Appellant.

Sriram P, Vishnu Sankar, Advs. for the Respondents.

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A The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.** 1. Leave granted.

2. These appeals are directed against the final judgment and order dated 16.11.2016 passed by the High Court of Kerala at Ernakulam in Mat. Appeal No.653 of 2016 and C.M. Application No.1986 of 2016 in  
B Mat. Appeal No.653 of 2016 whereby the High Court dismissed the application for condonation of delay as well as Matrimonial Appeal filed by the appellant herein and affirmed the order dated 16.10.2014 passed by the Family Court, Malappuram in O.P. No.1011 of 2011.

3. Facts of the case lie in a narrow compass and to appreciate the short point involved in these appeals, the facts, however, need mention  
C hereinbelow.

4. Respondent No. 1 is the wife of respondent No.6 and daughter-in-law of the appellant herein whereas respondent Nos. 2 to 5 are the children born out of the wedlock of respondent Nos. 1 and 6.  
D

5. Respondent No. 1 (wife/daughter in law) filed a suit being O.P. 1011 of 2011 against the appellant and respondent No. 6 in the Family Court, Malappuram for realization of the gold ornaments or in the alternative its value, which was alleged to have given by her parents to the appellant and respondent No. 6 in her marriage with respondent No.  
E 6 and also for grant of maintenance under Section 26 of the Family Courts Act.

6. This suit was being contested by the appellant as one of the defendants along with respondent No. 6 before the Family Court. However, the Family Judge placed the appellant *ex parte* on 16.10.2014  
F because he failed to appear in the suit on that date. The Family Court then proceeded to pass *ex parte* decree against the appellant on the same day.

7. The appellant then filed an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”) and prayed for setting aside of the *ex parte* decree along with  
G the application for condonation of delay in filing the application.

8. By order dated 04.03.2016, the Family Judge dismissed the applications and declined to condone the delay. As a consequence thereof, the application filed under Order IX Rule 13 of the Code was also  
H dismissed without going into its merit.

9. The appellant felt aggrieved by the order dated 16.10.2014 and filed Misc. Appeal (No.653/2016) before the High Court. Since the appeal was delayed by 554 days, the appellant filed an application under Section 5 of the Limitation Act praying therein for condonation of delay in filing the appeal. A

10. By impugned order, the High Court dismissed the application for condonation of delay as well as the appeal. In the opinion of the High Court, the appellant failed to make out any sufficient cause for condoning the delay in filing appeal and hence the application seeking condonation of delay of 554 days in filing the appeal was not liable to be condoned. As a result, the appeal was dismissed as barred by limitation, which has given rise to filing of these appeals by way of special leave by defendant No. 1– father-in-law in this Court. B C

11. Heard learned counsel for the parties.

12. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals, set aside the impugned order, condone the delay in filing appeal before the High Court and remand the case to the High Court for deciding the appeal filed by the appellant on merits. D

13. We have perused the contents of the application and the affidavit filed by the appellant before the High Court seeking condonation of delay in filing the appeal. E

14. The cause pleaded by the appellant therein was relating to his prolonged illness during the period in question. The appellant also filed medical documents to support the factum of his illness during the relevant time. F

15. It is not in dispute that the appellant is an old man and in his late sixties. It is also not in dispute that he did suffer heart disease during the relevant period and later he was down with dengue fever. It is also not in dispute that he was hospitalized to get medical treatment for these two ailments for a long time during that period. It is also not in dispute that he was mentally disturbed due to disputes going on in his family and was not able to attend to his day-to-day duties due to his old age and prolonged ailments. G

16. It is an admitted fact that the High Court did not dispute the genuineness of these facts and nor disputed the genuineness of the H

- A documents filed by the appellant in support of the cause pleaded. On the other hand, the High Court found as a fact that the appellant did suffer these ailments.

17. In the light of the aforementioned undisputed facts, in our opinion, the High Court should have taken liberal view in the matter and  
B held the cause shown by the appellant as “sufficient cause” within the meaning of Section 5 of the Limitation Act and accordingly should have condoned the delay in filing the appeal.

18. One cannot now dispute the legal proposition that the earlier view of this Court that the appellant was required to explain the delay of each day till the date of filing the appeal has since been diluted by the  
C later decisions of this Court and is, therefore, held as no longer good law.

19. In our considered opinion, having regard to the totality of the facts and circumstances of the case and the cause shown by the appellant, which is duly proved by the documents, we are inclined to hold that the cause shown by the appellant for condoning the delay in filing the appeal before the High Court was/is a sufficient cause within the meaning of  
D Section 5 of the Limitation Act and, therefore, the application filed by the appellant for condonation of delay of 554 days in filing the appeal deserves to be condoned. It is accordingly condoned but it is subject to the condition that the appellant shall pay cost of Rs.10,000/- to respondent  
E No. 1.

20. In view of the foregoing discussion, the appeals succeed and are accordingly allowed. Impugned order is set aside. The appeal (Misc. Appeal No.653/2016) is held to have been filed within limitation. It is accordingly restored to its original number. The High Court will now  
F decide the appeal on merits expeditiously in accordance with law.