

**THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY**

**C.R.P.No.3161 OF 2016**

**ORDER:**

This civil revision petition is directed against the order dated 22.04.2016 in I.A.No.377 of 2011 in O.S.No.94 of 2010, on the file of the Senior Civil Judge, Suryapet, wherein the said application filed by the petitioner-defendant No.4 under Section 5 of the Limitation Act read with Section 151 of the Civil Procedure Code (for short, 'CPC') seeking to condone the delay of 235 days in filing the petition under Order IX Rule 13 CPC, was dismissed.

2. Heard Mr. V.Ravi Kiran Rao, learned senior counsel, representing Mr. V.Rohit, learned counsel for the petitioner and Mr. K. Narashima Chari, learned counsel for respondent No.1. Perused the record.

3. The first respondent herein/plaintiff filed the suit O.S.No.94 of 2010 against respondent Nos.2 to 4/defendants 1 to 3 and revision petitioner herein/defendant No.4 for partition of the suit schedule properties. Suit summons were served on defendant Nos.1 to 3 and the summons against defendant No.4 were returned unserved, as refused. Thereafter, *ex parte* judgment and decree was passed

on 20.12.2010. Respondent No.1 filed an application for appointment of Advocate-Commissioner in the final decree petition. Immediately, the revision petitioner filed application under Order IX Rule 13 CPC to set aside the *ex parte* preliminary decree along with an application in 1.A.No.377 of 2011 to condone the delay of 235 days in filing the petition to set aside the *ex parte* decree. Respondent No.1 herein resisted the same by filing counter affidavit denying the allegations. On a consideration of the material on record, the trial Court dismissed I.A.No.377 of 2011 vide orders dated 22.04.2016 stating that the revision petitioner failed to explain proper and sufficient cause to condone the delay of 235 days . Aggrieved by the same, the present revision is filed.

4. Mr. Ravi Kiran Rao, learned senior counsel, apart from making oral submissions also filed written submissions, vehemently contends that the trial Court has committed error in dismissing the application file to condone the delay of 235 days in filing the application to set aside the *ex parte* preliminary decree. Learned senior counsel further contends that the Courts have to take a liberal and pragmatic justice oriented, non-pedantic approach while dealing with the applications filed for condonation of delay and he prayed to

set aside the impugned order. Learned senior counsel placed reliance on the following decisions:

- i. **N.BALAKRISHNAN v. M.KRISHNAMURTHY**<sup>1</sup>
- ii. **S.GANESHA RAJU (DEAD) THROUGH LRs AND ANOTHER v. NARASAMMA (DEAD) THROUGH LRs. AND OTHERS**<sup>2</sup>
- iii. **ESHA BHATTACHARJEE v. MANAGING COMMITTEE OF RAGHUNATHPUR NAFAR ACADEMY AND OTHERS**<sup>3</sup>
- iv. **R.KRISHNA KISTAIAH v. R.BALA NARSAIAH (DIED) PER LRs AND OTHERS**<sup>4</sup>
- v. **ROBIN THAPA v. ROHIT DORA**<sup>5</sup>

5. *Per contra*, Mr. K. Narasimha Chari, learned counsel for the respondents, while supporting the impugned order, submits that the trial Court has rightly refused to condone the delay of 235 days in filing the petition to set order the *ex parte* preliminary decree, as the petitioner failed to show any sufficient cause for such delay and that the impugned order does not suffer from infirmity and prayed to dismiss the revision.

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<sup>1</sup>(1998) 7 SCC 123

<sup>2</sup>(2013) 11 SCC 341

<sup>3</sup>2014(1) ALD 21 (SC)

<sup>4</sup>2014 (2) ALT 634 (DB)

<sup>5</sup>AIR 2019 SC 3225

6. Thus, on hearing the submissions of both the learned counsel, the only question that arises for consideration is - whether the impugned order is sustainable in law?

7. The revision petitioner filed an application under Order IX Rule 13 CPC to set aside the *ex parte* preliminary with an application in I.A.No.377 of 2011 to condone the delay of 235 days in filing the application to set aside the *ex parte* decree passed 20.12.2010.

8. It is the case of the revision petitioner that she purchased the suit 'A' schedule property i.e., land in Sy.No.158 to extent of Acs.01-04 Gts., situated at Kuda Kuda Village, Chivemla Mandal, Nalgonda District under a registered sale deed dated 27.02.2008 from respondent Nos.2 to 4 herein. It is stated by the respondent No.1 in the plaint that respondent Nos.2 to 4 in collusion with each other sold away the suit 'A' schedule property and that her father/ respondent No.2 and respondent No.1 are close friends and without any sale consideration, the sale deed was executed. It is also alleged that respondent No.1 demanded for amicable settlement. Since the respondent No.2 failed to do so, the suit in O.S. No.94 of 2010 was

filed for partition and separate possession by respondent No.1 and also seeking declaration that the registered sale deed dated 27.02.2008 as null and void.

9. Learned senior counsel relied on the decision in **N.BALAKRISHNAN's** case (1 supra), wherein the Hon'ble Apex Court has laid down the principles on applications filed under Section 5 of the Limitation Act seeking condonation of delay and held at paragraphs 9 and to 13 as under:

It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry

of such time a bad cause would transform into a good cause.

Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice *vide* *Shakuntala Devi Jain Vs. Kuntal Kumari* [AIR 1969 SC 575] and *State of West Bengal Vs. The Administrator, Howrah Municipality* [AIR 1972 SC 749].

It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of *mala fides* or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred a large litigation

expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.

10. Keeping the above principles in mind and in view of the other authoritative pronouncements relied on by learned senior counsel for the petitioner, let me consider whether there is sufficient cause to condone the delay of 235 days in the instant case.

11. The grounds urged in the affidavit and the stand putforth by the petitioner herein for condonation of delay are that she is semi-illiterate and came to know about the *ex parte* preliminary decree through her relatives in the village and immediately she approached her counsel and filed the present application to condone the delay of 235 days in filing the application under IX Rule 13 CPC to set aside the *ex parte* decree. The petitioner further stated that the delay in not filing the application in time was neither willful nor negligence and if the delay is not condoned and the *ex parte* decree is not set aside, she will be put to loss and great injustice would be caused to him.

12. Barring the aforesaid, most of the other pleadings pertain to merits of the case. On a close look at the affidavit filed for condonation of delay, I find that though the delay is substantial, the

same has been sought to be explained in a manner even if it may not be foolproof but is quiet convincing.

13. Keeping in view the fact that the petitioner is *bona fide* purchaser of suit ' A' schedule property, which was purchased under a registered sale deed from respondent Nos.2 to 4 and the present suit is filed by respondent No.1 for partition of the same against the petitioner and also respondents Nos.2 to 4 herein and for allotment of shares to her as well as respondent Nos.2 to 4 and due to the *ex parte* proceedings being passed against respondent Nos.2 to 4 and revision petitioner, who are defendant Nos. 1 to 4, it would certainly deprive the valuable property rights of the petitioner.

14. For the foregoing reasons, I am of the view that the delay of 235 days occasioned in filing the application seeking condonation of delay along with the application under Order IX Rule 13 CPC was not deliberate and after considering the facts and circumstances of the case and keeping in view the fact that the rules of limitation are not meant to destroy the rights of the parties and herein the rights of the petitioner over the schedule property was, in fact, transferred at the instance of respondent Nos.2 to 4, who are none other than



co-sharers of respondent No. 1. Therefore, the cause shown for the delay and the explanation is acceptable and can be condoned.

15. Therefore, I find that the trial Court had committed jurisdictional error in not considering the application in a pragmatic manner, keeping in view the rights of the revision petitioner and as such the same is liable to be set aside in exercise of powers under Article 227 of the Constitution of India.

16. In the result, the civil revision petition is allowed. The impugned order dated 22.04.2016 in I.A.No.377 of 2011 in O.S.No.94 of 2010, on the file of the Senior Civil Judge, Suryapet, is hereby set aside. Consequently, I.A.No.377 of 2011 stands allowed. There shall be no order as to costs.

17. Miscellaneous petitions, if any pending, stand closed.

27.02.2023  
*Lrkm*

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**A.SANTHOSH REDDY, J**