

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

+ CIVIL REVISION PETITION No.2013 of 2024

Between:

Sandela Laxmi

...Petitioner

vs.

Athram Annaji & others

... Respondents

ORDER PRONOUNCED ON: 22.11.2024

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : Yes

NAMAVARAPU RAJESHWAR RAO, J

*** THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**
+ CIVIL REVISION PETITION No.2013 of 2024

% 22—11—2024

Sandela Laxmi ...Petitioner

vs.
Athram Annaji & others ...Respondents

!Counsel for the Petitioner : Sri Gajanand Chakravarthy

^Counsel for Respondents : Sri CH. Ravinder

<Gist :

>Head Note :

? Cases referred

- 1 2013(12)SCC 649
- 2 (2023) 10 SCC 531

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**CIVIL REVISION PETITION NO.2013 OF 2024****O R D E R:**

This Civil Revision Petition is filed by the petitioner/ plaintiff against the order dated 28.03.2024 passed by the learned Junior Civil Judge – Cum – Judicial Magistrate of First Class at Sirpur-T in I.A.No.38 of 2023 in O.S.No.93 of 2020.

2. Heard. Perused the record.

3. The case of the petitioner/plaintiff, in a nutshell, is that she is the owner, pattadar and possessor of the agriculture land to an extent of Ac.0-3920 gts (Ac.0-98 cents) in Sy.No.165, situated at Ityala Village of Dahegaon Mandal, Which is hereinafter to be referred as “suit schedule property”. She purchased the same from its owner by name Madavi Laxman and Madavi Nagaiah, sons Pandu, for valuable consideration through sale deed on 28.07.2012. The Tahsildar, Dahegaon implemented the said sale deed under ROR and mutation of patta was

affected on the name of the petitioner/plaintiff. The comprehensive pattadar passbook-cum-title deed was also issued in favour of the petitioner/plaintiff for the suit schedule property. It is further case of the petitioner/plaintiff that respondent/defendant Nos.1 to 6 are strangers to the suit schedule property and they have got no legal interest or right over it, but they have been proclaiming in the village that non-tribals cannot purchase land of tribals. On that ground, respondent/defendant Nos.1 to 6 are creating hurdle to the possession and enjoyment of the petitioner/plaintiff over the suit schedule property. While the things stood thus, on 05.10.2020 when the petitioner/plaintiff was watching the paddy crop at the suit schedule property, the respondent/defendant Nos.1 to 6 tried to dispossess her, but due to timely help of villagers, respondents/defendants could not succeed in their nefarious acts. The petitioner/plaintiff is apprehending dispossession in the hands of respondents/defendants.

4. Hence, the petitioner/plaintiff filed a suit vide O.S.No.93 of 2020 on the file of the learned Junior Civil Judge at Sirpur, seeking permanent injunction restraining the respondents/ defendants from interfering with her peaceful possession and enjoyment over the suit schedule property.

5. The trial Court after considering the contentions of the plaintiff, decreed the suit by restraining the respondents/defendants from interfering into the peaceful possession and enjoyment of the petitioner/plaintiff over the suit schedule property.

6. Aggrieved by the said ex parte judgement and decree, the respondents/defendants filed I.A.No.38 of 2023 in O.S.No.93 of 2020, seeking to condone the delay of (111) days i.e., from 18.10.2022 to 07.02.2023 in filing the petition to set aside the ex parte decree and permit them to proceed with the case.

7. Learned counsel for the Petitioner/plaintiff filed counter in the said I.A., stating that the suit was decreed

on 25.03.2021 and E.P.No.15 of 2022 was filed and notices were served on 13.09.2022 and the said E.P. was posted to 19.09.2022 for appearance of respondents/defendants. On 19.09.2022, Mr. Raparthi Ravinder, Advocate has filed his vakalatnama and the case was adjourned to 21.10.2022. On 23.01.2023, the said E.P. was adjourned on cost of Rs.200/- for filing of counter. It is also stated that the respondents/defendants are having knowledge of passing of ex parte decree from 13.09.2022 to 03.02.2023 and covering a period of 111 days as per the admission of respondents/defendants and they have not given day-to-day explanation for non-filing of condonation delay petition and a vague plea that due to ill-health of one person, the other persons also incapacitated to file petition for setting aside the exparte decree. The reason to condone the delay of 111 days is not cogent, reliable and reasonable.

8. Learned counsel for the petitioner/plaintiff relied upon the Common Judgment of this Court in I.A. No.1 of

2022 in/and Appeal Suit No.237 of 2022, dated 09.01.2023 with regard to condonation of delay, in which this Court referred to the principles laid down by the Hon'ble Supreme Court in ***Esha Bhattacharjee vs. Mg. Commit. of Raghunathpur Nafar Academy and others***¹, wherein the Apex Court while interpreting the provisions of Section 5 of the Limitation Act regarding condonation of delay, summarized the principles as follows:-

(i) There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

¹ 2013(12)SCC 649

(vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

(viii) *There is a distinction between inordinate delay and a delay of short duration or few days for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

(ix) *The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

(x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

(xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

(xii) *The entire gamut of facts is to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

(xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

9. Learned counsel for respondents/defendants relied upon the judgment of the Hon'ble Apex Court in ***Sheo Raj Singh (deceased) through legal representatives and others v. Union of India and another***². In the said case, while, condoning the delay with regard to, inordinate delay,

² (2023) 10 Supreme Court Cases 531

short duration of delay also discussed. In present case on hand, there is no inordinate delay, but there is short duration of 111 days and the said short duration can be considered.

10. Heard both sides. The trial Court while condoning the delay observed the following:

“As seen from the record, the main suit is filed for grant of perpetual injunction against the petitioner/defendant. The reason stated by the petitioner is that he suffered from cancer and also death of his counsel, apart from COVID period. The suit was decreed exparte on 25.03.2021. The present petition was filed on 07.02.2023 to condone the delay in filing of the petition to set-aside the exparte decree. The reason stated by the petitioner/defendant is that he suffered from cancer and also death of his counsel, apart from COVID period. Therefore, having regard to the facts of the case, to meet the ends of justice and in order to afford one more fair opportunity to the petitioner and to decide the case on merits, this Court is inclined to allow the petition”.

11. With the above observation, the trial court allowed I.A.No.38 of 2023 in O.S.No.93 of 2020. Both the parties relied up on the judgments while condoning the delay and as seen from the record, there is nothing wrong in condoning the delay in filing the petition.

12. As discussed supra in ***Esha Bhattachrjee’s*** case, while condoning delay, the Supreme Court observed some principles that there should be a liberal, pragmatic, justice

oriented, non-pedantic approach while dealing with an application for condonation of delay and also observed that there is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted.

13. In the present case, predicable condition is that petitioner is suffering from cancer and his counsel also died during the Covid-19 period and under this predicable condition, delay of 111 days is not an inordinate delay. In those circumstances, the delay has been considered and the trial Court also under the same circumstances allowed the I.A.

14. In the present case, respondent No.1/defendant No.1 is suffering from cancer and his counsel also died during the Covid-19 period. Therefore, there are sufficient grounds to condone the delay. Accordingly, the trial Court rightly allowed I.A.No.38 of 2023 in O.S.No.93 of 2020.

15. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusal of the impugned order passed by the trial Court dated 28.03.2024, this Court does not find any discrepancy in the said order.

16. Accordingly, the Civil Revision Petition is dismissed, confirming the order, dated 28.03.2024 passed in I.A.No.38 of 2023 in O.S.No.93 of 2020, by the learned Junior Civil Judge-cum-Judicial Magistrate of First Class at Sirpur-T. No order as to costs.

Miscellaneous applications, if any pending, shall stand closed.

NAMAVARAPU RAJESHWAR RAO, J

Dated: 22.11.2024

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THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

C.R.P. NO.2013 OF 2024

Dated:22.11.2024

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