

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT
HYDERABAD**

THE HONOURABLE SMT. JUSTICE RENUKA YARA

CIVIL REVISION PETITION No.345 of 2025

18th DAY OF MARCH, 2026

Between:

Shaik Abdul Khader.

...Petitioner

AND

G. Anil Dutt Kamble.

...Respondent

ORDER:

Heard Sri N. Bhujanga Rao, learned counsel for the petitioner and Sri Police Venkat Reddy, learned counsel for the respondent. Perused the entire record.

2. The Civil Revision Petition is filed aggrieved by the order dated 21.10.2024 in E.A.No.40 of 2023 (Old E.A.No.1844 of 2021) in E.P.No.1743 of 2022 (Old E.P.No.2349 of 2021) on the file of the learned I Additional District Judge, Medchal-Malkajgiri District at Kushaiguda, wherein a petition filed seeking extension of time for payment of balance sale consideration ordered as per *ex parte* decree dated 29.12.2011 in O.S.No.371 of 2010 passed by the learned Principal District Judge, Ranga Reddy District at L.B.Nagar, has been dismissed.

3. The brief facts of the case are that the petitioner, who is the decree holder in O.S.No.371 of 2010 on the file of the Principal District Judge, Ranga Reddy District at L.B.Nagar, in a suit for specific performance had obtained decree *vide* docket order dated 29.12.2011. The Court directed the petitioner to deposit balance sale consideration of Rs.8,10,000/- to the credit of the suit within 15 days from the date of the decree. While so, the petitioner had filed E.P.No.2349 of 2021 before the Principal District Judge, Ranga Reddy District and said E.P. was transmitted to the I Additional District Judge, Medchal-Malkajgiri District at Kushaiguda and re-numbered as E.P.No.1743 of 2022. Further, the petitioner had filed E.A.No.40 of 2023 (old E.A.No.1844 of 2021), to condone the delay of 3358 days in depositing the balance sale consideration and sought for permission to deposit the said amount into the Court.

4. The respondent/judgment debtor are filed counter opposing the petition alleging that there are no grounds to condone the delay. The reasons cited for delay are that the respondent had filed a petition to set aside the *ex parte* order and said petition was dismissed on contest. Thereafter, the respondent approached the petitioner expressing willingness to receive the balance sale consideration, but thereafter evaded. During said interim, the petitioner's daughter's marriage was arranged and due to

retirement of the petitioner from service he could not pay the balance consideration of Rs.8,10,000/- into the Court. The respondent opposed the petitioner's case for condoning delay, denying having filed a petition to set aside the *ex parte* decree. Further, the respondent denied the petitioner, approaching the petitioner agreeing to receive the balance sale consideration and evading the same. The reasons such as arrangement of the petitioner's daughter's marriage and retirement from service are denied as valid grounds for condoning delay in payment of balance sale consideration.

5. The learned I Additional District Judge, Medchal-Malkajgiri District at Kushaiguda, considered the version presented by both the parties and it is observed that no details are given as to what petition was filed by the respondent to set aside the *ex parte* decree, what are the dates of marriage of the petitioner's daughter and when the petitioner retired from service. The details about the cause for delay are not given but are stated vaguely. The learned I Additional District Judge, Medchal-Malkajgiri District at Kushaiguda relied upon judgment in **Agnipalli Hanumantha Rao v. Vegi Venkata Lakshmi**¹, wherein it is held that whenever extension of time for deposit of balance sale consideration is to be sought for, the same has to be before the Court which passed the decree and not the Court which is

¹ 2013 (2) ALT 533

executing the decree. It is held that the petition seeking extension of time for depositing balance sale consideration has to be filed before the Court that passed the decree, as such dismissed the petition as not maintainable. Aggrieved by the same, the present Civil Revision Petition is preferred.

6. In the grounds of revision, the petitioner contends that the respondent indeed filed a petition to set aside the *ex parte decree* and the same was dismissed on contest. Further, there is admission by the respondent that the petitioner is in possession of the suit schedule property and the same supports the contention that after dismissal of the suit there was an understanding between the parties with regard to registration of sale deed. There are reasons stated for delay, and the said reasons are not vague, more so when the respondent admitted the petitioner being in possession of the suit schedule property. The decree was passed by the Court and said decree became final as it remained unchallenged. At best the Execution Court ought to have compensated the respondent/JDR by ordering interest on the balance sale consideration at the prevailing rate of interest in any nationalized bank. The petitioner is ready to deposit the balance sale consideration as directed, but he was prevented for the reasons mentioned in the affidavit. There is no bar permitting the petitioner to deposit the balance sale consideration in Execution Court, in case the said Court is

satisfied with the reasons stated. The petitioner insisted that admission by the respondent about the petitioner's possession over the E.P. schedule property and the fact that the decree became final have to be taken into consideration by this Court and set aside the impugned order.

7. Learned counsel for petitioner argued that the petitioner had succeeded in a suit for specific performance of agreement of sale and an *ex parte* decree was passed by the learned Principal District Judge, Ranga Reddy District in O.S.No.371 of 2010 dated 29.12.2011, the said decree has become final as there was no challenge to said judgment and decree. Further, the petitioner who is the decree holder is in occupation of the suit schedule property. Though, a decree was passed directing the petitioner to pay the balance sale consideration of Rs.8,10,000/- within 15 days of the decree, the same could not be done as the respondent had filed a petition to set aside the *ex parte* decree. Then, said petition was dismissed on contest. Thereafter, the petitioner's daughter's marriage was settled and thereafter, the petitioner himself retired from service. On account of all these events the petitioner could not pay the balance sale consideration into the Court for a period of 3358 days. In the circumstances, the E.P. was filed along with the E.A. seeking to condone delay and to permit the petitioner to pay the balance sale consideration into the Court. It is pleaded that the case of

the petitioner has to be considered on compassionate ground on account of the fact that the petitioner has been in possession of the suit schedule property legitimately on the basis of a decree passed by a competent Civil Court, but a registered sale deed is not executed by the respondent. The peculiar situation is such that the petitioner who is the rightful owner is in occupation of his property without a registered sale deed. This fact of the petitioner's possession is admitted by the respondent in his counter. Any person who had any grievance with respect to the judgment and decree passed ordering specific performance would not have remained inactive in the face of the petitioner being in occupation of the suit schedule property during the entire time after passing of the decree. It is submitted that the Court can always direct payment of interest on the balance sale consideration to be paid keeping in view the interest awarded for money deposits interest awarded by nationalized bank.

8. Learned counsel for respondent opposed the reasons cited for condoning delay in payment of balance sale consideration. It is argued that the petitioner was never ready and willing to pay the balance sale consideration. It is argued that there are no grounds for condoning delay since the details about what is the petition filed to set aside the *ex parte* decree are not mentioned. Further, there is denial on the part of the

respondent about agreeing to receive the balance sale consideration or executing the registered sale deed. It is further argued that no dates are given with respect to when the petitioner's daughter's marriage was fixed and in what manner said marriage was the reason for non-payment of the balance sale consideration. Lastly, it is also submitted that the time of retirement of the petitioner is not mentioned and retirement also cannot be a reason for non-payment of the balance sale consideration. While admitting that the petitioner is in occupation of the suit schedule property, it is contended that after a period of almost 9 years, there are no grounds to condone the delay and permit the petitioner to pay the balance sale consideration.

9. Learned counsel for the respondent relied upon judgment of the High Court of Andhra Pradesh at Hyderabad in the case of **Agnipalli Hanumantha Rao** (supra), wherein it is held that it is always open for the plaintiff to work out remedies before the Court which passed the decree seeking condonation of delay in depositing the balance sale consideration and that Court may dispose of those applications in accordance with law by giving due opportunity to the defendants. That is, it is contended that the petition to condone delay in payment of balance sale consideration ought to have been moved before the learned Principal District Judge, Ranga Reddy

District, but not the learned I Additional District Judge, Medchal-Malkajgiri District at Kushaiguda. On that count, it is argued that only the Court which passed the decree has power to grant time or further time, but not the executing Court as per Section 28 of the Specific Relief Act, 1963. The Court which passed the decree alone would have the power to entertain the application before the and not the executing Court.

10. Further, reference is made to the judgment in the case of **Damodaran Pillai v. South Indian Bank Limited**², wherein it is held that an application under Section 5 of Limitation Act, 1963, is not maintainable in a proceeding arising under Order XXI of CPC when execution application is dismissed for default.

11. This citation is strictly not applicable to the present case as the execution petition was not dismissed for default, but filed with delay, it is held that an application under Section 5 of Limitation Act, 1963 is not maintainable in a proceeding arising under Order XXI of the Code, and the Court cannot invoke inherent power for condonation of delay.

12. On the strength of aforementioned Citations the learned counsel for respondent opposed the petitioner's claim to condone delay.

² 2005 AIR (SC) 3460

13. The objection raised about non applicability of Section 5 of the Limitation Act, 1963, to execute proceedings is indisputable. However, with respect to matters prosecuted under the Specific Relief Act, 1963, there is a facility under Section 28 of the Specific Relief Act, 1963, to seek extension of time for payment of balance sale consideration. It is the discretion of the Court to extend the same or not.

14. In the instant case, the petitioner ought to have filed petition under Section 28 of the Specific Relief Act, 1963, seeking extension of time, but not under Section 5 of the Limitation Act, 1963. In any case, as per the catena of judgments of the Hon'ble Supreme Court, filing of petition under wrong provision cannot be a reason for denying the relief sought for.

15. The petitioner had obtained decree of specific performance against the respondent. The respondent in his wisdom did not contest the main suit and the same resulted in passing of decree in favour of the petitioner. The respondent did not deem it fit to challenge the decree for a period of atleast 10 years and the judgment and decree has become final. At this stage, when the petitioner has sought to condone delay for payment of balance sale consideration, the respondent, who did not oppose the passing of decree or challenge it by way of appeal, would not have valid ground to oppose the petition.

16. In this context, the judgment of High Court of Andhra Pradesh at Amaravathi in the case of **T.H.Chakraphani v. B.S.Lavanya**³, is relevant, wherein it is held as follows:

“12. In the present case, the contention of the revision petitioner with regard to reason for delay in depositing balance of sale consideration amount of Rs.25,000/- is unchallenged and admittedly the revision petitioner obtained decree of specific performance against the respondent. If the petitioner is not permitted to deposit balance of sale consideration amount of Rs.25,000/- only, the very purpose of obtaining the decree will be defeated. Further, in an adversary system obtaining in India, a country inhabited mostly by poor, non-literate or semi- literate persons unaware of the basic knowledge of substantive and procedural laws enough chances and opportunities should be given to the litigants to fight out litigations in a fair manner. Subject to the constraints of law, a contestant should be given a free and fair opportunity to contest an action in Court and a lay client should not be made to suffer for negligence of lawyer. When there are no latches on the part of the client, latches on the part of the advocate would not disentitle petitioner to appropriate relief.

13. In the present case, the respondent not contested the suit and also petition filed by the petitioner seeking condonation of delay in depositing balance of sale consideration amount of Rs.25,000/-. If the petition is not allowed to deposit balance of sale consideration amount by condoning the delay, which amounts to nullifying a decree of specific performance passed in favour of the petitioner, that too when the respondent not challenged reason mentioned in the affidavit of the revision petitioner before the trial Court. The orders passed by the Court below are not sustainable either in law or on facts which warrants interference by this Court.”

17. As per the above judgment, there is a need to permit the petitioner to pay balance sale consideration failing which the decree passed ordering specific performance would be nullified.

³ MANU/AP/1343/2022

18. Coming to the next objection about seeking a relief before the Court which passed decree. It is point to be noted that the petitioner on his own did not seek relief before the I Additional District Judge, Medchal-Malkajgiri District at Kushaiguda, it is on account of bifurcation of districts, on account of administrative action, the main suit was transferred to the Courts at Medchal-Malkajgiri District, on the point of jurisdiction. In case such an action was not taken by the concerned authorities, the suit and relevant record would be still on the file of the learned Principal District Judge, Ranga Reddy District. Only on account of the administrative action, the suit has been transmitted to the Medchal-Malkajgiri District. Therefore, the petitioner had no other option, but to file petition to condone delay before the learned I Additional District Judge, Medchal-Malkajgiri District at Kushaiguda. It does not stand reason to move the petition before the learned Principal District Judge, Ranga Reddy District, as said Court would have refused to register the said petition on the ground that case has been transferred to Medchal-Malkajgiri District Courts after bifurcation of the districts. Even otherwise, the learned Principal District Judge, Ranga Reddy District, would not have the record to process the petition filed by the petitioner. The aspect of transfer due to bifurcation of districts, in itself again cannot be compared to a genuine error committed by the parties in seeking relief before the

execution Court as compared to the Court which passed the decree. In view of the foregoing discussion, the impugned order is set aside.

19. In the result, the Civil Revision Petition is **allowed** setting aside the order dated 21.10.2024 in E.A.No.40 of 2023 (Old E.A.No.1844 of 2021) in E.P.No.1743 of 2022 (Old E.P.No.2349 of 2021) passed by the learned I Additional District Judge, Medchal-Malkajgiri District at Kushaiguda, and consequently, the E.A.No.40 of 2023 is allowed condoning delay of 3358 days caused in depositing the balance sale consideration of Rs.8,10,000/- by the petitioner. The petitioner is permitted to deposit the balance sale consideration with interest at 12% per annum from the date of decree till the date of deposit. There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.

RENUKA YARA, J

Date: 18.03.2026
GVR