

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.NOS.4614 &4609 OF 2014, 707 & 776 OF 2015,
CRP(SR) NO.4215 OF 2015 & C.M.A.NO.1028 OF 2014

COMMON JUDGMENT:

Since all the revision petitions are in respect of the same properties pertaining to the same suit and parties are also one and the same and since the learned counsel wanted to advance arguments in all the revision petitions and also the appeal and requested for disposal of all these matters, the revisions petitions and the appeal are being disposed of together by way of a common judgment.

The orders impugned in all these matters are of even date and of the same suit. C.R.P.No.4614 of 2014 is filed by the petitioners/defendants against the order, dt.11.11.2014 passed in I.A.No.1172 of 2014 in O.S.No.739 of 2014, whereby the Principal Senior Civil Judge, Ranga Reddy District at L.B.Nagar dismissed the application filed by the petitioners herein under Section 5 of Limitation Act to condone the delay of 28 days in filing the petition under Order 9 Rule 13 to set aside the exparte decree, dt.18.07.2014. C.R.P.No.4609 of 2014 is filed by the petitioners against the order passed by the court

below in E.A.No.223 of 2014 in E.P.No.190 of 2014 dismissing the application filed under Order 21 Rule 26 C.P.C., for stay of execution. C.R.P.No.707 of 2015 is filed by the petitioners/defendants against the order, dt.19.01.2015 passed in E.A.No.271 of 2014 in E.P.No.190 of 2014 filed under Sections 151 and 144 of C.P.C., to direct the decree holder to re-deliver the property to the petitioners. C.R.P.No.776 of 2015 is filed by the petitioners/defendants against the order dt.19.01.2015 passed in E.A.No.282 of 2014 in E.P.No.190 of 2014 under Sections 151 and 144 of C.P.C. Similarly, C.R.P. (SR) No.4215 of 2015 is filed against the order, dt.19.01.2015 passed in E.A.Nos.271, 282 & 288 of 2014 in E.P.No.190 of 2014 filed under Sections 151 and 144 of C.P.C. C.M.A.No.1028 of 2014 is filed by the appellants/defendants against the order passed in I.A.No.1173 of 2014 whereby the court below dismissed petition to set aside the exparte decree dt.18.07.2014.

Since C.R.P.No.4614 of 2014 will have the effect of disposal of other revision petitions and the appeal, this revision is taken up for consideration.

The case of the petitioners/defendants in O.S.No.739 of 2014 is that they received notices in the month of May 2015

and as they were under an impression that the court is in vacation and as they are illiterates and have no legal knowledge, they did not appear before the court below. Thereafter, the respondents came to the suit schedule property and threatened the petitioners. On enquiry, they came to know that the court below passed ex parte decree on 18.07.2014 in the said suit. Hence, they filed I.A.No.1172 of 2014 seeking condonation of delay of 28 days in filing a petition under Order 9 Rule 13 to set aside the ex parte decree dt.18.07.2014.

The respondents filed counter affidavit stating that the petitioners received suit summons and they are well aware of the proceedings pending between the same parties in O.S.No.56 of 2014 and 57 of 2014 on the file of Junior Civil Judge at Rajendarnagar and contested the same. They never threatened the petitioners. It is also stated that the Mandal Surveyor was appointed to survey the land. The original land owners (petitioners' vendors) cancelled the sale deed executed in favour of the petitioners. The petitioners without having any right or title are trying to grab their property. The petitioners filed I.A.No.1172 of 2014 to stay the execution proceedings and the respondents sought for dismissal of the said petition.

The court below dismissed the application filed by the

petitioners on the ground that several suits are pending between the parties and though the petitioners have legal knowledge, they have not shown sufficient cause to condone the delay.

The learned counsel for the petitioners submits that notices were issued to the petitioners in I.A.No.1172 of 2014 in O.S.No.117 of 2014 in the month of May 2014 to the effect that the said application is posted to 13.06.2014 and the suit is posted to 27.06.2014 and they have to appear before the vacation judge-cum-Senior Civil Judge, Ranga Reddy District. It is also submitted that the petitioners could not appear before the court below as they were under the impression that court will not function during vacation. He also submits that as per Section 32 (5) of the Andhra Pradesh Civil Courts Act, 1972, when once the vacation is over, all suits, appeals and other proceedings pending in the court of the Vacation Civil Judge which, but for this section would have been instituted or pending in such District Court shall stand transferred to the Court concerned and any judgment, decree order or proceedings passed by the Vacation Civil Judge shall, after such transfer be deemed to be a judgment, decree, order or proceedings by the Court concerned. He also contends that as

per Rule 63 of Civil Rules of Practice, notice is required to be issued to the parties for transfer of suits and in the present case, admittedly, no such notice and summons were issued to them. He also submits that because of that confusion also, the petitioners could not appear before the court below. He filed copies of notices issued to the petitioners in I.A.No.310 of 2014 in O.S.No.117 of 2014, which are transferred to the court of Senior Civil Judge, Ranga Reddy District and re-numbered as I.A.No.1172 of 2014 in O.S.No.739 of 2014. He also submits that when the said suit is filed by the respondents/plaintiffs to declare them as absolute owners and possessors of the suit schedule property and also for permanent injunction against the petitioners/defendants not to interfere into the suit schedule property, but the court below decreed the suit granting recovery of possession of the suit schedule property and declared the respondents/plaintiffs as absolute owners of the schedule property. The trial court should have applied its mind and recorded reasons. He also submits that in the plaint it is clearly mentioned by the respondents/plaintiffs that O.S.Nos.56 and 57 of 2014 are filed by the petitioners for perpetual injunction before the court of Junior Civil Judge-cum-XVII Metropolitan Magistrate, Cyberabad, Rajendarnagar and the trial court also

passed orders dt.23.09.2014 in E.A.No.223 of 2014 in E.P.No.119 of 2014 against the pleadings of the respondents/plaintiffs. In support of his contentions, he relied on a decision of the Apex Court in **BALRAJ TANEJA AND ANOTHER VS. SUNIL MADAN AND ANOTHER**^[1] and also the decisions of this Court reported in **MAILWAR NARSAPPA AND ANOTHER VS. B.SANGAMMA**^[2], **KEDARISETTI ATMARAM VS. N.SEETHARAMARAJU**^[3], **YELLAGOLA RAMANARASAIAH VS. G.SADANAND**^[4] and **KURUPROLU ATCHAYA AND OTHERS VS. BIDESHI RAGHURAM SINGH**^[5].

On the other hand, the learned counsel for the respondents submits that the petitioners have received summons in I.A.Nos.1172 and 1173 of 2014 on 13.06.2014 and 27.06.2014 respectively and the same were returned by them. He also submits that in the plaint copy sent by the respondents herein to the petitioners herein, it was clearly mentioned that the suit in O.S.No.117 of 2014 was re-numbered as O.S.No.739 of 2014 by the Principal Senior Civil Judge, Ranga Reddy District at L.B.Nagar. Therefore, it cannot

be said that in the notices and summons received by the petitioners, it was mentioned as Vacation Judge and the petitioners have no legal knowledge and are aware of legal proceedings. He also submits that since the petitioners/defendants have not explained the delay properly, the court below rightly dismissed the said applications. As such, no interference is warranted.

In this case it has to be seen that the delay is only of 28 days and the copies of cause title in the notice and summons filed by the petitioners go to show that though the petitioners received summons and notices on 13.06.2016 and 27.06.2014 and they did not appear before the court below and have waited up to the filing of execution proceedings. The documents filed by the petitioners show that after transfer of the suit, the cause title is corrected and the suit in O.S.No.117 of 2014 is re-numbered as O.S.No.739 of 2014 by the Senior Civil Judge and it is not known when the corrections are made in the cause title. It is not known to the petitioners whether the said corrections are made either before issuing of notices or after receiving of notices. More so, as contended by the learned counsel for the petitioners, the suit was filed for two prayers, one for recovery of possession and injunction and also to

declare that the plaintiffs are the absolute owners and possessors of the suit schedule property. The court below decreed the suit without applying its mind and directed the petitioners to hand over the vacant possession of the suit schedule property. In **Balran Taneja's** case (Supra-1) the Apex Court in paras 45 and 46 held as follows:

“Learned counsel for Respondent 1 contended that the provisions of Order 20 Rule 4 (2) would apply only to contested cases as it is only in those cases that “the points for determination” as mentioned in this rule will have to be indicated, and not in a case in which the written statement has not been filed by the defendants and the facts set out in the plaint are deemed to have been admitted. We do not agree, whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds *ex parte* and is ultimately decided as an *ex parte* case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10, the court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved.

An attempt was made to contend that the definition of judgment as set out in Section 2 (9) of the Code would not be applicable to the judgment passed by the Delhi High Court in its original jurisdiction wherein the proceedings are regulated by the provisions of the Delhi High Court Act, 1966. It is contended that the word “judgment” used in the Delhi High Court Act, 1966 would not take its colour from the

definition of “judgment” contained in Section 2 (9) of the Code of Civil Procedure. We do not intend to enter into this controversy, fortunately as it is not contended that the Code of Civil Procedure does not apply, but we cannot refrain from expressing that even if it were so, the Delhi High Court is not absolved of its obligation to write a judgment as understood in common parlance. Even if the definition were not contained in Section 2 (9) or the contents thereof were not indicated in Order 20 Rule 4 (2) CPC, the judgment would still mean the process of reasoning by which a Judge decides a case in favour of one party and against the other. In judicial proceedings, there cannot be arbitrary orders. A Judge cannot merely say “suit decreed” or “suit dismissed”. The whole process of reasoning has to be set out for deciding the case one way or the other. This infirmity in the present judgment is glaring and for that reason also the judgment cannot be sustained”.

In Mailwar Narsappa’s case (Supra-2) this Court in para 17 observed as follows:

“Applying the said ratio to the facts of the present case, it is clearly evident that the decree passed by the trial Court is an ex parte decree, which is also vitiated on account of non-application of mind and non-consideration of five issues. Hence, the impugned judgment suffers from procedural as well as jurisdictional errors and warrants interference by this Court under Section 96 C.P.C. The appeal suit, therefore, is liable to be allowed by setting aside the decree and judgment passed by the Court below and the

appellants/defendants are required to be granted opportunity to contest the suit by participating in the suit from the stage of evidence of PW3 onwards”.

In **Kedarisetti Atmaram’s** case this Court in para 30 held as follows:

“Thus, it is clear that merely because a suit has been filed, the Court is not bound to decree the suit. The Court has to exercise judicial discretion and examine the facts and circumstances of the case and consider the motive behind litigation and a fraud, if any, played by the parties to the suit and the situation under which the defendant was set ex parte and not contesting the suit. In fact, in a case where the defendant is not appearing before the Court for any reason, the burden increases on the Court to meticulously examine the entire record and if the Court feels that it is not a fit case or decreeing the suit, in its discretion, the Court may dismiss the suit and reject the prayer for specific performance. The Court is not bound to grant specific performance merely because a suit is filed for specific performance”.

In **Yellagolla Rama Narsaiah’s** case (Supra-4) this Court in

para 9 held as follows:

“The Civil Courts are expected to respect the orders passed by each other rather than act in conflict with each other. This is based upon the principle of comity which has to be maintained between the various courts. When the Rent Controller has come to notice that there is an order of injunction passed against the decree-holder in R.C.No.79/83, he should have waited till the said injunction was modified or some other order was passed, which would not enable the said decree holder to circumvent orders of injunction which were in force in I.A.No.855/89. It may be technicality there is no injunction restraining the Rent Controller from executing the decree of eviction in R./C.No.79/83, but by permitting executing with knowledge that the decree-holder is restrained by another Court in executing the said decree, the Rent Controller unwittingly helped the decree-holder in circumventing the orders passed by another Civil Court. Such an attitude on the part of the Court is to be deprecated. What the 1st respondent has done in this case cannot but be termed as an abuse of the legal process. How far the revision petitioner is equally guilty of the abuse of legal process in obtaining an ex parte decree is a matter to be decided in I.A.No.855/89 or in O.S.No.613/89. The proper thing for the 1st respondent herein was to satisfy the Civil Court in I.A.No.855/89 to see that the injunction order is vacated, if there were such merits”.

**In ESHA BHATTACHARJEE VS. MANAGING
COMMITTEE OF RAGHUNATHPUR NAFAR ACADEMY
AND OTHERS^[6]** the Apex Court in para 15 (iii) (vi) & (viii)
held as follows:

“(iii) Substantial justice being paramount and
pivotal the technical considerations should not
be given undue and uncalled for emphasis.
(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.
(viii) There is a distinction between inordinate
delay and a delay of short duration of 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.

**I n S.GANESHARAJU AND ANOTHER VS.
NARASAMMA (DEAD) THROUGH LRS. AND OTHERS** ^[7] the

Apex Court in paras 12, 13 and 14 held as follows:

“The expression “sufficient cause” as appearing in Section 5 of the Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice. Unless the respondents are able to show mala fides in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by.

The rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause.

The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. In the instant case, we find that the appellants have shown sufficient cause seeking condonation of delay and the same has been explained satisfactorily”.

Rule 63 of Civil Rules of Practice reads as follows:

63. (48) (1) Application for transfer:-

“An application for transfer of a suit, appeal or other proceeding from one court in another shall be made by original petition entitled in the matter of the pending suit, appeal or other proceeding as in Form No. 17 Notice of the application in Form No.18 shall be issued and served on the other parties to the suit, appeal or other proceeding. Provided that if under Section 24 of the Code, the District Court transfers as suit, appeal or other proceeding of its own motion and without giving notice in the first instance, it shall record in writing its reasons for dispensing with such notice and shall direct the court from which it has been transferred to intimate the parties or their Advocates about the transfer and the date on which they should appear before the court to which it has been transferred.”

The plaintiffs themselves have clearly stated that in respect of the suit schedule properties, they have filed a suit and status quo order was granted by the court below, but the court below has not gone into the said aspect.

Instead of going into the technicalities about the

appearance of the petitioners, it has to be seen that there is no enormous delay in filing the applications for condonation of delay for setting aside ex parte decree. On going through the documents referred to above and the reasons given by the petitioners would go to show that there was confusion in the cause title of suit, show cause notice, interlocutory applications as well as summons in the suit. When the applications are filed under Order 21 Rule 26 of C.P.C., the court below instead of taking up the application for condonation of delay, proceeded to consider E.P. proceedings.

In view of law laid down in above decisions and facts and circumstances, I am of the opinion that the trial court should have condoned the delay of 28 days in filing the applications by the petitioners under Order 9 Rule 13 C.P.C., to set aside the ex parte decree. The court below straight away numbered application for setting aside ex parte decree. More so it appears that there is no notice regarding transfer of suit. This also goes to show non-application of mind by the court below. When once this court holds that the petitioners are entitled for condonation of delay of 28 days, the order dt.11.11.2014 passed in I.A.No.1172 of 2014 is liable to be set aside. As such, they are entitled for condonation of delay and the ex parte

order dt.18.07.2014 is liable to be set aside. It is also to be seen that when once exparte decree is set aside under Order 9 Rule 13, the petitioners are entitled for restitution of the property. Though it has been pleaded by the petitioners that fraud has been played by the respondents while obtaining the exparte decree, this court feels that the said aspect is not required to be decided at this stage, because the same has to be gone into by the trial court at the time of trial.

In view of the same, C.R.P.4614 of 2014 and C.M.A.No.1028 of 2014 are allowed. Since the exparte decree is set aside, common order dt.19.01.2015 passed in E.A.Nos.271, 282 & 288 of 2014 in E.P.No.190 of 2014 is also set aside and consequently, C.R.P.Nos.707/2015 & 776 of 2015 are allowed. C.R.P (SR) No.4215 of 2015 and C.R.P.No.4609 of 2014 which are filed to stay the execution proceedings are dismissed as infructuous, as the ex parte decree is set aside, the question of staying execution proceedings does not arise. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY, J

Dt.31.12.2015
TJS

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

**C.R.P.NOS.4614 &4609 OF 2014, 707 & 776 OF 2015,
CRP(SR) NO.4215 OF 2015 & C.M.A.NO.1028 OF 2014**

Dt.31.12.2015

[\[1\]](#)) (1999) 8 SCC 396

[\[2\]](#)) 2013 (6) ALD 499

[\[3\]](#)) 201 (1) ALD 426

[\[4\]](#)) 1989 (3) ALT 610

[\[5\]](#)) AIR 1995 AP 58

[\[6\]](#)) 2014 (1) ALD 21 (SC)

[\[7\]](#)) (2013) 11 SCC 341