

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION Nos.4960 and 5195 of 2011

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COMMON ORDER:

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These two Revisions arise between the same parties out of two connected suits in relation to the same property. Therefore they are being disposed of by this common order.

2. The petitioner in both the Revisions is daughter of one V.Vidya Sagar. A house plot No.89 with H.No.4-150/89 (new H.No.4-170/89) in Madhavapuri, Sainikpuri, Secunderabad stands in the name of petitioner.

3. The 1st respondent herein filed O.S.No.573 of 1995 on the file of I Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar against 2nd respondent, who is vendor of petitioner and petitioner for specific performance of the agreement of sale in respect of the said property. The said suit was not contested by petitioner even though she was a minor at that time and she was represented by her father Sri V.Vidya Sagar as natural guardian. The suit was decreed on 03-02-2003.

4. The 1st respondent also filed O.S.No.416 of 1998 before the same Court against petitioner and her vendor i.e. 2nd respondent to declare that a sale deed executed by 2nd respondent in favour of petitioner in respect of the above property is null and void and for a perpetual injunction restraining the petitioner and 2nd

respondent from alienating the same. In this suit, Sri P.Goverdhan Reddy, counsel was engaged on behalf of petitioner and a decree on contest was passed on 15-06-2004. Even in this suit, the petitioner, being a minor was represented by her father Sri V.Vidya Sagar.

5. Challenging the judgment and decree dt.03-02-2003 in O.S.No.573 of 1995, on 17-10-2006 the petitioner filed A.S.S.R.No.18035 of 2006 on the file of the District Judge, Ranga Reddy District at L.B. Nagar.
6. On the same day, she filed A.S.S.R.No.18039 of 2006 before the said Court challenging the judgment and decree dt.15-06-2004 in O.S.No.416 of 1998.
7. She also filed I.A.No.1979 of 2007 in A.S.S.R.No.18035 of 2006 under Order 41 Rule 3-A C.P.C. to condone the delay of 411 days in filing A.S.S.R.No.18035 of 2006 and I.A.No.1981 of 2007 to condone the delay of 411 days in filing the appeal A.S.S.R.No.18039 of 2006 against the judgment and decree dt.15-06-2004 in O.S.No.416 of 1998.
8. In the affidavits filed along with these applications, the petitioner contended that she was born on 03-08-1986 and the suit schedule property had been purchased in her name from 2nd respondent on 19-08-1995 by her father; it was again renovated and rebuilt in 1999-2000 by taking a loan from M/s.Dhanalaxmi Housing Finance and by laying 3 more floors in the existing built-up area; her father was employed in Cement Corporation of India and had been posted at various places in the country between 1993 and

2006; from July, 2002, the petitioner and her mother were staying in Tenali, Guntur District for her education; on 02-08-2004, she completed 18 years of age and became major; on 03-08-2006, on her 21st birthday, she was informed by her mother that some litigation is pending in respect of the suit schedule property standing in her name, and when petitioner insisted, her father informed about the two suits mentioned above, which had been decreed. According to her, her father told her that since he was moving from place to place since 1993 and as petitioner was in possession of the property, he did not take steps till she attained majority. She alleged that she had acquired knowledge about the suits on 03-08-2006 only and having regard to the fact that she became major on 02-08-2004, and since her father had not paid proper attention and protect her interests during her minority, which had resulted in the above decrees, the delay in filing the appeals be condoned.

9. Counter affidavit was filed by 1st respondent in both the applications opposing condonation of delay and pointing out that after filing written statement in O.S.No.416 of 1998, the father of petitioner had not chosen to contest it, resulting in passing of an *ex parte* decree, that the petitioner cannot calculate the delay from the date of attaining majority and she has no sufficient grounds to seek condonation of delay in filing the appeals.
10. By separate orders dt.25-04-2011, the Court below dismissed both the applications. It held that it was not as if the relationship between the petitioner and her mother vis-à-vis her father were such that there was no communication at all among the three of them; since even according to the petitioner, the suit schedule

property was acquired by her father with her money in her name, it cannot be said that the father had acted detrimental to her interests; the petitioner cannot plead ignorance about the litigation against her own property till she attaining the age of majority on 03-08-2006 and claim that she came to know through her parents about the litigation. The Court below also did not accept the contention of the petitioner that petitioner is entitled to invoke Section 6 of the Limitation Act, 1963 stating that the said provision applies only for suits and application for execution of decrees and would not apply to appeals. It observed that petitioner's father, who was her natural guardian and who was representing her, was expected to protect her person and property and if he acts negligently, the petitioner cannot take advantage of the same.

11. Challenging the same, these Revisions are filed.
12. Heard Sri Ch.Ramesh Babu, learned counsel for petitioner in both the Revisions.
13. Learned counsel for petitioner contended that substantial and valuable property of petitioner is involved in the litigation; the property had in fact been developed by making further investments by petitioner; the petitioner is still enjoying rents from the subject property; even though her father had not acted properly to protect her interests in the property, the Court should adopt a liberal approach and condone the delay in filing the appeals. He contended that the petitioner did not stand to benefit by lodging the appeal late, that refusing to condone delay would result in a meritorious matter being thrown out at the very threshold causing injustice, and the highest that can happen

when delay is condoned is that a cause would be decided on merits after hearing the parties. He relied upon the decisions in **Collector, Land Acquisition, Anantanag and another Vs. Mst.Katiji and others and N.Balakrishnan Vs. M.Krishnamurthy**. He also pointed out that the judgment rendered in O.S.No.573 of 1995 by the I Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar is only a 4 line judgment and cannot be even said to be a judgment in the eye of law. He therefore prayed that the impugned orders be set aside.

14. I have noted the submissions of the learned counsel for petitioner.
15. The facts narrated above indicate that although petitioner was a minor as on the date when O.S.No.573 of 1995 and O.S.No.416 of 1998 were decided on 03-02-2003 and 15-06-2004 respectively, she completed the age of 18 years on 02-08-2004. Appeals against the judgments and decrees in both the above suits were filed on 17-10-2006.
16. While the period of delay upto 02-08-2004, when the petitioner attained the age of majority, is probably liable to be condoned on the ground that she was a minor upto that date, the petitioner should have taken steps to file the appeals at least within a reasonable time from that date. However, by 17-10-2006, when she did file the appeals, more than 2 years had elapsed.
17. The petitioner conveniently seeks to blame her father for negligence in protecting her interests in the suit schedule property in both the suits. While it may be so, the petitioner

cannot get advantage of the same when she herself files appeals 2 years after she attained majority. It is not the case of petitioner that she and her father have not been in contact with each other or that the petitioner and her mother, who were resident in Tenali were in any way disabled from contacting her advocate in the Ranga Reddy District Court for taking steps to file appeals against the judgments in the above suits.

18. The judgment in **Collector, Land Acquisition, Anantanag** (1 supra) no doubt states that ordinarily a litigant does not stand to benefit by lodging an appeal late and substantial justice deserves to be preferred, when the delay is not deliberate.
19. In **N.Balakrishnan** (2 supra), the Supreme Court held that length of delay is no matter, but acceptability of the explanation is only the criterion. It also held that the words 'sufficient cause' occurring in Section 5 of the Limitation Act, 1963 should receive a liberal construction so as to advance substantial justice. It held :

"13. 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 quite 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."

20. In the facts of the present Revisions, I am of the opinion that there is no satisfactory explanation by petitioner for the period of

delay subsequent to 02-08-2004 till 17-10-2006 when the appeals were actually filed. If at this point of time, more than 10 years after decrees have been passed, the delay is condoned and decrees in the above suits are allowed to be challenged, since these appeals themselves may take a few more years to be decided, serious prejudice would be caused to 1st respondent. The explanation given by petitioner is not *bona fide* and therefore does not deserve any acceptance.

21. I therefore do not find any merit in the Revisions and they are accordingly dismissed. No costs.

22. As a sequel, miscellaneous petitions pending if any, in these Revisions, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 29-09-2015

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