

APPLICATION NO.7744 OF 2015
IN C.S.NO.807 OF 2006

PUSHPA SATHYANARAYANA, J.

The above application is filed by the applicant / first defendant to condone the delay of 1686 days in filing the application to set aside the *exparte* decree dated 17.02.2011 passed by this Court in C.S.No.807 of 2006.

2. The suit was filed by the respondents 1 and 2 / plaintiffs for division of movable properties. The suit summons were served on the defendants on 12.12.2006. Despite service of summons, the defendants had not entered appearance to defend the suit.

3. The reason stated in the affidavit filed in support of the application is that the applicant is an Auditor and he used to undertake auditing in outside station. Though he had instructed his subordinate to engage an Advocate and proceed further and his subordinate also assured that he was taking care of the case and engaged an Advocate to defend the suit, he did not do so. He had also given written instructions to draft the written statement. However, only on receipt of notice, copy of affidavit and Judges Summons, he had the knowledge of passing of *exparte* decree and that his subordinate

committed breach of trust that had resulted in the *ex parte* decree. The *ex parte* decree was passed on 17.02.2011 and there is a delay of 1686 days in filing the application to set aside the *ex parte* decree.

4. Resisting the said application, the respondents 1 and 2 / plaintiffs have filed counter affidavit stating that having received summons, the applicant / first defendant is duty bound to follow up his case. It is stated that the statement made by the first defendant that he had instructed in the office to engage an advocate without any name, particulars is nothing but a patent lie. It is also not correct on the part of the first defendant that his subordinate betrayed him in furnishing the particulars, since he had not stated even the name of his subordinate. As there are no valid and sufficient reasons to condone the delay of 1686 days, the respondents 1 and 2 / plaintiffs prayed for dismissal of this application.

5. The learned counsel for the applicant / first defendant contended that the *ex parte* decree would not be a qualified judgment in terms of Section 2(9) of the Code of Civil Procedure. Hence, he should be given a chance to contest the same. The learned counsel for the applicant also offered

to pay a portion of the decree amount as a condition precedent for condoning the delay and consequently setting aside the *exparte* decree.

6. Certainly, a delay of 1686 days is an inordinate delay and the doctrine of prejudice is attracted and it warrants a strict approach. If the explanation offered is concocted for the purpose of the application, it is the duty of the Court to be vigilant before condoning the delay. As stated by the Honourable Supreme Court, condonation of delay is a serious matter, as it would prejudice the other side for whom the right had already crystallized in view of the inordinate delay. Nevertheless, applying a liberal, pragmatic and justice oriented approach, the applicant may be put on terms before allowing the application.

7. The suit is only for division of movable properties. Though the decree was passed in the year 2011, the plaintiffs are unable to enjoy the fruits of the decree. In these circumstances, the Court had asked the applicant / first defendant, who was present in Court, to find out the willingness to deposit the suit claim, as a condition precedent, for the condonation of delay. Accordingly, it was represented that the applicant / first defendant is ready and willing to deposit a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) to the credit of the

Civil Suit, being a portion of the suit claim, as a condition precedent, for allowing the application.

8. Having obtained decree in the year 2011, the decree holders / plaintiffs have been running pillar to post to get the same executed, in vain. Considering the plight of the respondents 1 and 2 / plaintiffs, this Court is also inclined to impose a cost of Rs.10,000/- (Rupees Ten Thousand Only) payable to the respondents 1 and 2 / plaintiffs for the hardship suffered by them.

9. In the light of the above observations, this application is allowed, subject to the following conditions:

(i) A sum of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) being a portion of the suit claim be deposited to the credit of the suit, by the applicant/ first defendant, within a period of eight weeks from the date of receipt of a copy of this order; and

(ii) the applicant / first defendant is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand Only) as

cost to the respondents 1 and 2 / plaintiffs, within a period of eight weeks from the date of receipt of a copy of this order, failing compliance of the above said conditions, this application shall stand dismissed automatically, without any further reference to this Court.

10. Post this matter “for reporting compliance” on 24.10.2016.

07 / 09 / 2016

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