

APPLICATION NO.5279 OF 2016
IN C.S.NO.103 of 2012

PUSHPA SATHYANARAYANA, J.

The above application is filed by the applicant / first defendant to condone the delay of 850 days in filing written statement.

2. The suit is filed for declaration and specific performance.

3. It is stated in the affidavit filed in support of the application that the first defendant has not received any suit summons and the same was brought to his knowledge only through the second defendant, who is the *bona fide* purchaser of the suit schedule property. It is further stated by the applicant that as per the Registry of this Court, the service was completed for him on 08.10.2013. Since the applicant / D1 was facing domestic problems, he could not contact his counsel for filing written statement in time. Hence, there was a delay of 850 days in filing the written statement.

4. The counter affidavit has been filed by the plaintiff in opposing the said application.

5. At this juncture, it is relevant to note that the Honourable Supreme Court has reiterated that a liberal pragmatic and justice oriented approach should be given in dealing with the application for condonation of delay. It is the substantial justice which is paramount and pivotal and the technical considerations should not be given unnecessary emphasis. Of course, lack of *bona fides* imputable to a party seeking condonation of delay is relevant and significant fact.

6. This Court, on being satisfied with the reasons stated in the affidavit filed in support of this application, is inclined to condone the delay, but however on condition.

7. Accordingly, this application is allowed on condition that the applicant / first defendant shall pay a sum of Rs.2,000/- (Rupees two thousand only) to the plaintiff within a period of two weeks from the date of receipt of a copy of this order.

8. It is stated that the plaintiff's side evidence is over and it is posted for defendants' side evidence. It is open to the plaintiff to reopen and recall his witness, if he desires to do so.

9. Post the suit before the learned Additional Master-III on 01.11.2016.

17 / 10 / 2016

srn

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18 /10 / 2016