

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

CIVIL REVISION PETITION NOS.3022 AND 3391 OF 2015

C O M M O N O R D E R
(Per Hon'ble Sri Justice Sanjay Kumar)

These Civil Revision Petitions arose out of the execution proceedings in E.P.No.146 of 1999 in A.R.C.No.13 of 1996 on the file of the learned VIII Junior Civil Judge, City Civil Court, Hyderabad. The petitioner in both these revisions is the 3rd respondent in the said E.P. The E.P. was ordered on 01.09.2014 after the executing Court directed forfeiture of the right of the petitioner, respondent No.3 therein, to file her counter. The petitioner/respondent No.3 thereupon filed E.A.No.252 of 2014 in the execution petition seeking condonation of the delay of 37 days in filing a petition to set aside the order dated 01.09.2014 passed in the E.P. She also filed E.A.No.250 of 2014 to set aside the said order. By separate orders dated 03.06.2015, the executing Court dismissed both E.As. Aggrieved thereby, the present revision petitions were filed. C.R.P.No.3022 of 2015 arises out of the order in E.A.No.252 of 2014 filed in the E.P., while C.R.P.No.3391 of 2015 pertains to the order passed in E.A.No.250 of 2014 filed in the E.P.

By order dated 31.07.2015 passed in C.R.P.No.3022 of 2015, this Court granted interim stay of further proceedings in the execution petition. Respondents 1 to 5, the decree holders, filed a petition in C.R.P.M.P.No.4494 of 2015 in C.R.P.No.3022 of 2015 to vacate the said order.

Heard Sri S.Malla Rao, learned counsel representing Smt. I.Maamu Vani, learned counsel for the petitioner in both revisions

and Sri L.Prabhakar Reddy, learned counsel appearing for respondents 1 to 5/deed holders.

The delay in the filing of the application to set aside the *ex parte* order in the E.P. is 37 days. Sri S.Malla Rao, learned counsel, would point out that the petitioner/respondent No.3 was prevented from taking steps expeditiously owing to the fact that she had to undergo a surgery and was advised rest thereafter. The medical certificate furnished by Dr.Manjula Anagani, Senior Laparoscopic Surgeon, Beams Hospital Laparoscopic Surgery Centre, bears out this fact.

Per contra, Sri L.Prabhakar Reddy, learned counsel, would state that the predecessor-in-title of respondents 1 to 5, being the original deed holder, was held entitled, under Award dated 27.11.1996 passed in A.R.C.No.13 of 1996, to allotment of Plot No.22 or any other plot in cancellation of the plot of the junior most member of Achuta Co-operative Housing Society, the 6th respondent herein, or by means of allotment of Plot No.41 which was not allotted to any member as on that day. Learned counsel would point out that despite the fact that this award was passed as long back as in the year 1996 and the original deed holder has already expired, his legal representatives are yet to get relief.

We find from the order passed in the execution petition that the executing Court did not undertake any exercise to identify as to who would be the junior most member of the 6th respondent society whose allotment of a plot would be liable to be cancelled in the event Plot No.22 and Plot No.41 were not available to be allotted to the original deed holder/his legal representatives. Apart from the petitioner, who was respondent No.3 in the E.P., another person viz.,

Ch.Praveena was also impleaded as respondent No.2 to the E.P. However, the executing Court seems to have undertaken no exercise to ascertain as to whether the allotment in favour of the said respondent was earlier or later in point of time when compared to the petitioner/respondent No.3.

No doubt, the petitioner/respondent No.3 failed to take steps before the executing Court and thereby forfeited her right to file a counter. But that by itself did not absolve the executing Court of undertaking the aforestated exercise, which was a necessary corollary to the Award in A.R.C.No.13 of 1996.

Sri Malla Rao, learned counsel, would also place reliance on **MANIBEN DEVRAJ SHAH V/s. MUNICIPAL CORPORATION OF BRIHAN MUMBAI**¹, wherein the Supreme Court observed that the expression 'sufficient cause' used in Section 5 of the Limitation Act, 1963 is elastic enough to enable the Courts to apply the law in a meaningful manner so as to serve the ends of justice.

In the totality of the aforestated circumstances and given the legal position as set out *supra*, we are of the opinion that this is a fit case to allow the petitioner/respondent No.3 an opportunity to put forth her case before the executing Court.

C.R.P.No.3022 of 2015 is accordingly allowed setting aside the order dated 03.06.2015 passed in E.A.No.252 of 2014 and condoning the delay on the part of the petitioner/respondent No.3 in filing an application to set aside the order dated 01.09.2014 passed in E.P.No.146 of 1999.

¹ 2012 (4) ALD 35 (SC)

In consequence, C.R.P.No.3391 of 2015 is also allowed setting aside the *ex parte* order dated 03.06.2015 passed in E.A.No.250 of 2014.

It is stated that the petitioner/respondent No.3 has already filed a counter along with the set-aside petition and therefore, the same can be taken due note of and acted upon.

Given the fact that the petitioners in the execution petition are seeking relief under an Award dating back to the year 1996, we are of the opinion that the executing Court should give due priority to this case and proceed in the matter without granting unnecessary adjournments. The executing Court shall endeavour to dispose of the execution petition expeditiously and in any event not later than four months from the date of receipt of a copy of this order, after giving due opportunity of hearing to all parties concerned. Needless to state, the executing Court shall adjudicate the matter on its own merits and in accordance with law uninfluenced by any observations made in this order.

Pending miscellaneous petitions in both the matters shall stand closed. In the circumstances, there shall be no order as to costs.

SANJAY KUMAR, J

ANIS, J

2nd NOVEMBER, 2016

Note: Issue C.C. in 3 days.
B/o Svv