

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4791 of 2013

ORDER:

The proposed defendants 2 and 3/third parties filed this Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 assailing the orders of dismissal dated 04.10.2013 passed by the learned Principal Senior Civil Judge, Ranga Reddy District in IA.no.635 of 2012 in OS.no.429 of 2006 filed under Section 5 of the Limitation Act requesting to condone the delay of 1265 days in filing the petition to set aside the ex parte decree dated 18.09.2008.

2. I have heard the submissions of the learned counsel for the revision petitioners/3rd parties and the learned counsel for the 1st respondent/plaintiff. I have perused the material record.

3. The parties in this revision shall hereinafter be referred to as 'the petitioners', the 1st respondent/plaintiff and the 2nd respondent/defendant for convenience and clarity.

4. The case of the petitioners in support of their request in the aforementioned application is as follows:

They are the owners and possessors of the agricultural land in an extent of Ac.2.00 cents in Sy.no.110/C situated at Rampally village, Keesara Mandal, Ranga Reddy District having acquired it by virtue of a registered sale deed bearing document no.1376/2009 dated 06.03.2009 registered in the office of the Sub-Registrar, Keesara. In-fact the petitioners' vendor executed a GPA *vide* document no.4921/2007 dated 02.04.2007. The said power of attorney holder of the petitioners' vendor had executed the sale deed in favour of the petitioners. The said vendor-N.Pradeep Rao in his turn had purchased the said property from Indira Seshagiri Rao/the defendant in the

suit through a registered sale deed bearing document no.8535/2005 dated 07.12.2005 registered in the Office of the Sub-Registrar, Shamirpet. Since the date of the purchase, the petitioners are in continuous uninterrupted possession of the said property. They had erected pillar stones (kaddies) and fenced the property with barbed wire to protect the property. While so, the 1st respondent/plaintiff and his men came to the property on 07.04.2012 stating that they had purchased the said land and that they intend to make the same into house plots and had tried to encroach into the property. On enquiries, the petitioners came to know that the 1st respondent/plaintiff having filed the aforementioned suit had obtained the sale deed through the Court. The agreement of sale was created by the plaintiff; and, basing on such agreement, the *ex parte* decree was obtained; whereas the petitioners have got clear title. They are advised to contest the suit. Hence the present petition is filed for condonation of delay in seeking to set aside the decree granted on 18.09.2008 in the aforementioned suit in favour of the 1st respondent/plaintiff.

5. The case of the 1st respondent/plaintiff is this:

The material allegations in the affidavit filed in support of the petition of the petitioners are false. The allegations that the petitioners are the owners and possessors of the agricultural land admeasuring Ac.2.00 cents in sy.no.110/C having purchased the same by virtue of sale deed dated 06.03.2009 and that in turn their vendor had purchased the property from Indira Seshagiri Rao by virtue of sale deed dated 07.12.2005 and that the GPA holder of their vendor had executed the sale deed in their favour are all false. Their document is a forged document. This respondent/plaintiff pursuant to an agreement of sale dated 03.05.2003 executed by the sole defendant/Indira Seshagiri Rao had filed the aforementioned suit for specific performance. The said suit was decreed *ex parte* and subsequently in the EP.no.18/2009 on the file of the Court of the learned Principal Senior Civil Judge, Ranga Reddy District, the Court had executed the registered sale deed bearing document no.232 of 2010 dated 19.01.2010 and put this

respondent/plaintiff in possession of the suit property. The defendant/2nd respondent herein having entered into an agreement of sale dated 03.05.2003 with this respondent in respect of the property has no right to execute any sale deed in favour of any third parties including the proposed defendants/petitioners herein. In the sale deed of the vendors of the petitioners, it is mentioned that V. Indira is a house-wife whereas Indira Seshagiri Rao is a Teacher. After the execution of the sale deed and delivery of the property by the Court, the MRO, Keesara Mandal had mutated the property in favour of the 1st respondent/plaintiff and had issued pattedar passbook and title deed book in respect of the suit property under proceedings no.B/222/2010 dated 04.12.2010. Therefore, the question of alleged interference with the possession of the proposed parties does not arise as this 1st respondent/plaintiff is in settled possession of the property. The petitioners approached the Court with unclean hands and the petition is liable to be dismissed.

6. On merits, the trial Court had dismissed the petition of the petitioners/3rd parties holding that they are not entitled to invoke the provision of Order IX Rule 13 of the Code being third parties and that they did not properly explain in their affidavit filed in support of the petition as to when they have come to know about the *ex parte* decree and also the delay.

7. The learned counsel for the petitioners while reiterating their pleaded case, which is stated supra, would submit that the petitioners/3rd parties who are aggrieved by an *ex parte* decree can seek to set aside the *ex parte* decree by invoking the provision of Order IX Rule 13 of the Code and that since the delay had occasioned in seeking to set aside the *ex parte* decree, the petitioners are constrained to file the petition for condonation of delay and that in view of the fact that they are claiming interest in the property by virtue of sale deed, which is executed by Indira Seshagiri Rao-the defendant, the trial Court ought to have condoned the delay and ought to have given them an opportunity to prosecute their application to set aside the *ex parte* decree.

8. Per contra, the learned counsel for the 1st respondent/plaintiff while supporting the orders of the Court below and while reiterating the case of the plaintiff would contend that the petition is not maintainable and that in any view of the matter, the delay is not explained properly and that the petition is filed in a casual manner without offering any explanation much less valid explanation for the delay and, therefore, the Court below was justified in dismissing the petition.

9. The learned counsel for the petitioners placed reliance on the following decisions:

1. N. Balakrishnan v. M. Krishna^[1]
2. M.K. Prasad v. P. Arumugam^[2]
3. Raj Kumar v. Sardari Lal and others^[3]

The decision third cited was relied upon in support of the propositions that a person who had acquired interest in suit property during the pendency of the suit can be brought on record at any stage and also that a *lis pendens* transferee from the defendant though not arrayed as a party in the suit is still a person claiming under the defendant and that a *lis pendens* transferee though not brought on record under Order 22 Rule 10 of the Code is entitled to move an application under Order 9 Rule 13 of the Code to set aside a decree passed against his transferor, the defendant in the suit. There is no dispute with the settled legal proposition in the said decision. Therefore, the contention of the petitioners that the finding of the Court below contrary to the said proposition of law is not correct has got acceptable merit. The first two decisions are relied upon on the principles concerning the aspect of condonation of delay. In the decision first cited, it was observed by the Supreme Court that the Court should adopt a liberal approach while considering the application for condonation of delay. In the decision second cited, the facts disclose that the delay had occasioned on account of the advocate withdrawing from the case after framing of issues owing to the

death of his son and the appellant/defendant having no intimation till he received the notice in the execution proceedings. The facts of the cited case also would show that the suit was decreed *ex parte* by an unreasoned judgment. Therefore, the Supreme Court held that the delay deserves to be condoned. It is trite to observe that the first two decisions relied upon on the aspect of condonation of delay turned on the facts peculiar to those cases. In view of the decision of the Supreme Court in **Raj Kumar** (3 supra), it is trite to note that the petition to set aside the *ex parte* decree passed against transferor can be sought to be set aside by a transferee *lis pendens* by moving an application under Order 9 Rule 13 of the code. Be that as it may.

10. In view of the fact that the legal position is well settled, it is apt to note the following propositions on the settled legal aspect in regard to the judicious discretion to be exercised while considering the applications for condonation of delay: 'The statutory provision mandates that while considering the applications for condonation of delay, the applicants are required to show sufficient cause for condonation of such delay. Condonation of delay is a matter of discretion of the Court. The words 'sufficient cause' under Section 5 of the Limitation Act should receive liberal construction so as to achieve substantial justice. However while condoning the delay; the Court should not forget the opposite party altogether. A liberal approach is to be adopted in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the limitation Act. The concept of such a liberal approach cannot be equated with doing injustice to the other party. The court cannot condone the delay in a case where the Court concludes that there is no justification for the delay. The discretion has to be exercised within the reasonable bounds known to the law. Whims or fancies, prejudices or predilections could not form the basis for exercising the discretionary power. When the delay is directly a result of negligence or default or inaction of a party, such delay cannot be condoned on mere asking of that party. When an applicant makes an incorrect statement in an application seeking condonation of delay, the Court ought to refuse to condone such delay or inordinate delay. When the explanation

offered is a sufficient cause for condonation of delay, but the delay that deserves to be condoned is a long delay, such delay is generally condoned by imposition of adequate costs as compensation to offset the delay in hearing and disposal of the case. Length of delay is no matter and the acceptability of the explanation is the only criterion. If there is no acceptable explanation, sometimes a delay of shorter length may also be uncondonable whereas in certain other times, the delay of a very long range can be condoned provided sufficient cause is shown.” The expression ‘sufficient cause’ is a cause for which the defendant could not be blamed. [Vide the decision of the Supreme Court in **Parimal v. Veena**^[4]]. In this decision, it was also held as follows: ‘However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion it has to be exercised judiciously.’

11. Reverting to the facts of the case, in the affidavit filed in support of the petition, it is only stated that on 07.04.2012 the plaintiff along with his men came to the land stating that he intends to lay out the property into plots and tried to encroach into the property and that the proposed defendants resisted the said action and that on enquiries they came to know about the suit and the *ex parte* decree. No further details are pleaded. It is not stated as to when and with whom the enquiries were made. It is borne out by the record and it is undisputed that the suit of the plaintiff/1st respondent for specific performance of an agreement of sale dated 30.05.2003 filed against the defendant, the 2nd respondent herein, was decree *ex parte* on 18.09.2008 and that pursuant to the said decree, an execution petition was filed in the year 2009 and that eventually the Court had executed the sale deed on 19.01.2010 in favour of the plaintiff/1st respondent and put him in possession of the property. In this back drop, it is for the petitioners to explain as to how they could not know about the above Court proceedings including delivery of possession of the property. The affidavit filed in support of the petition is bereft of the necessary details; and, it is obvious that the petition is filed in a

casual manner with vague allegations avoiding showing sufficient cause or giving valid explanation for the delay. When the delay is not satisfactorily explained and sufficient cause is not shown for the long delay, such delay cannot be condoned on mere asking of that party. Hence, this Court finds that sufficient cause is not made out for condonation of the long delay. During the course of hearing, it is fairly stated that the petitioners herein, who are third parties to the aforementioned suit OS.no.429 of 2006, which is decreed in favour of the plaintiff/1st respondent herein, had already filed a suit in OS.no.359 of 2012 against the plaintiff and two others on the file of the Court of the learned II Additional District Judge, Ranga Reddy District for declaration and perpetual injunction. The said suit was filed in 3rd week of April, 2012 almost simultaneously with the present petition filed for condonation of delay in seeking to set aside the *ex parte* decree granted in favour of the plaintiff/the 1st respondent herein. In view of the said fact that the petitioners had already filed an independent suit for declaration of title and perpetual injunction, in the well considered view of this Court, the petition filed for condonation of delay in seeking to set aside the *ex parte* decree in the suit of the plaintiff/ 1st respondent herein being a parallel proceeding is misconceived. Indeed, the petitioners, if they so desire and so choose, can as well challenge the *ex parte* decree and/or the sale deed of the plaintiff/1st respondent herein in the said independent suit already filed by the petitioners, if they have not already assailed the same in the said suit.

12. Viewed thus, this Court finds that the Court below is justified in dismissing the petition and that the order impugned warrants no interference.

13. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

20th April, 2016

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[\[1\]](#) AIR 1998 SC 3222

[\[2\]](#) (2001)6 SCC 176

[\[3\]](#) (2004) 2 SCC 601

[\[4\]](#) AIR 2011 SUPREME COURT 1150