

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CIVIL REVISION PETITION NO.911 OF 2017

P.Buchanna

.. Petitioner

Vs.

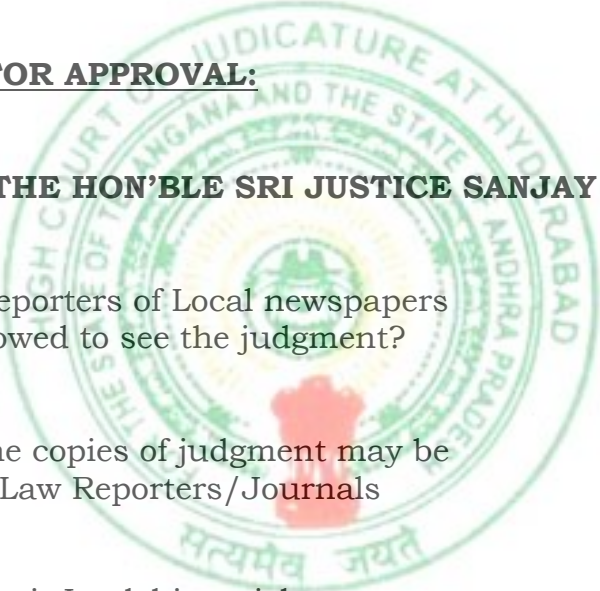
B.Yadagiri

.. Respondent

DATE OF JUDGMENT PRONOUNCED: 11.04.2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR

- 
1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
 2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether Their Lordships wish to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

*** THE HON'BLE SRI JUSTICE SANJAY KUMAR**
+ CIVIL REVISION PETITION NO.911 OF 2017

% DATED 11th APRIL, 2017

P.Buchanna

.. Petitioner

Vs.

\$ B.Yadagiri

.. Respondent

<Gist:

>Head Note:

! Counsel for petitioner : Sri K.Sreenivas

^Counsel for respondent : --

? CASES REFERRED:

1. 2007 (6) ALD 819 = 2008 (1) ALT 475
2. 2002 (6) ALD 473 = 2002 (5) ALT 766
3. 1988 (1) ALT 783
4. 2005 (1) ALT 805



THE HON'BLE SRI JUSTICE SANJAY KUMAR**CIVIL REVISION PETITION NO.911 OF 2017****O R D E R**

This Revision Petition under Section 115 CPC arises out of the order dated 07.11.2016 of the learned II Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.1156 of 2014 in O.S.No.555 of 2013. The said suit was filed by the respondent herein for specific performance of the alleged agreement of sale dated 13.10.2012 and was decreed *ex parte* on 01.04.2014. The petitioner herein, the defendant in the suit, filed I.A.No.1156 of 2013 therein under Order 9 Rule 13 CPC to set aside the said *ex parte* decree by condoning the delay of 189 days in applying for the same. By the order under revision, the Court below dismissed the said I.A.

Conventional means of service having failed, substituted service of notice was effected upon the respondent/plaintiff by publication thereof in Eenadu Telugu Daily newspaper, L.B.Nagar Edition. The respondent/plaintiff however did not choose to enter his appearance before this Court either in person or through counsel.

Perusal of the order under revision reflects that the Court below dismissed the I.A mainly on the ground that the petitioner/defendant had failed to file separate applications, one under Section 5 of the Limitation Act, 1963, seeking condonation of delay, and the other under Order 9 Rule 13 CPC to set aside the *ex parte* decree. The Court below further found that sufficient grounds had not been shown by the petitioner/defendant to set aside the *ex parte* decree.

The issue that falls for consideration presently is whether one single application could have been filed by the petitioner/defendant for condonation of the delay and also to set aside the *ex parte* decree.

At the outset, it may be noted that Rule 55 of the Civil Rules of Practice and Circular Orders, 1980 (for brevity, 'the Rules of 1980'), provides that separate applications must be filed for each distinct relief prayed for, but goes on to state that the same would not be necessary if the reliefs sought are consequential.

Reliance was placed by the Court below on **S.SEKHAR BABU V/s. Y.RAMAKRISHNA REDDY**¹ in support of its conclusion that two separate applications had to be filed for the reliefs sought. Perusal of **S.SEKHAR BABU**¹ reveals that the earlier decision of this Court in **M.NARASIMHA REDDY V/s. BEGARI SAMUEL**², which held to the contrary, was distinguished on facts. However, the basis for the *ratio* in **M.NARASIMHA REDDY**², to the effect that two such separate applications need not be filed, was the earlier decision of a Division Bench of this Court in **M.A.QADER V/s. MD.AZMAT ALI**³. Therein, it was held that where the grounds for condonation of delay and for setting aside an *ex parte* decree were the same, it would not be necessary to file a separate application for condonation of delay. The Division Bench observed that the power to do so vests in the Court and if sufficient material is placed before the Court, wherefrom the required satisfaction can be gleaned, the Court can admit the set aside petition even after the period of limitation. The Division Bench further pointed out that Section 5 of the Limitation Act, 1963, does not in terms say that a separate application should be filed.

Despite this edict being culled out in **M.NARASIMHA REDDY**², the learned Judge who decided **S.SEKHAR BABU**¹ distinguished between the cases on the short ground that the defendant in

¹ 2007 (6) ALD 819 = 2008 (1) ALT 475

² 2002 (6) ALD 473 = 2002 (5) ALT 766

³ 1988 (1) ALT 783

M.NARASIMHA REDDY² was not served with summons unlike the defendant in **S.SEKHAR BABU¹** and therefore, filing of a condone delay petition was held to be not even necessary in the earlier case. Significantly, the learned Judge also failed to take note of **KAVALI NARAYANA V/s. KAVALI CHENNAMMA⁴**, wherein another learned Judge affirmed and followed the principle laid down in **M.NARASIMHA REDDY²**. The learned Judge observed therein that as per Rule 55 of the Rules of 1980, filing of individual applications for separate reliefs is not a universal principle and as regards applications under Order 9 Rule 13 CPC, condonation of delay, whenever such applications are filed beyond the stipulated period of limitation, is interconnected with the main relief, viz., setting aside of the *ex parte* decree. The learned Judge further observed that in such cases, the grounds for both reliefs would be the same and the two reliefs are so interconnected with each other that one cannot exist in the absence of the other. The learned Judge therefore concluded that such reliefs can be said to squarely fall within the category of consequential reliefs, which are exempted from the requirement of Rule 55 of the Rules of 1980.

The aforestated case-law demonstrates that the learned Judges, who individually decided **S.SEKHAR BABU¹**, on the one hand, and **M.NARASIMHA REDDY²** and **KAVALI NARAYANA⁴**, on the other, disagreed on the issue. However, it is not necessary to refer the matter to a Division Bench for consideration on this contentious issue as there is already an authoritative pronouncement of a Division Bench on this aspect. In **M.A.QADER³**, a Division Bench of this Court categorically held that where the grounds for seeking both

⁴ 2005 (1) ALT 805

such reliefs are the same, it would not be necessary that a separate application be filed for condonation of the delay. It was also pointed out that Section 5 of the Limitation Act, 1963, does not stipulate filing of a separate application thereunder. Reference was made to the power vesting in the Court, if sufficient material is placed before it, to arrive at the required satisfaction that the delay could be condoned so as to admit the petition for setting aside an *ex parte* decree even after the period of limitation. Further, applicability of the exemption under Rule 55 of the Rules of 1980, when the consequential relief of setting aside an *ex parte* decree is sought by condoning the delay in applying for the same, was lucidly dealt with in **KAVALI NARAYANA**⁴.

This being the legal position, the Court below erred in applying the law laid down in **S.SEKHAR BABU**¹ overlooking the binding Division Bench decision in **M.A.QADER**³, which held to the contrary.

As regards the finding of the Court below that sufficient grounds were not established for setting aside the *ex parte* decree in the present case, the affidavit filed in support of the I.A. reflects that the same reason was cited by the petitioner/defendant to explain the delay on his part and also for setting aside the *ex parte* decree. He claimed that he had failed to take necessary steps in this regard owing to old age and age-related ailments. The petitioner/defendant is a senior citizen aged over 66 years. That being so, the Court below ought to have been more liberal in its approach and should have also considered the fact that landed property rights were at stake in the suit. The Court below should therefore have afforded an opportunity to the petitioner/defendant to put forth his case. Trite to state, Courts are not expected to adopt a hidebound and pedantic approach while dealing with applications of this nature and the larger

perspective must be kept in mind, balancing the interests of justice and those of the rival parties. It is a settled principle of law that when valuable immovable property rights are involved, the Court should ordinarily afford a hearing to both parties rather than taking a decision by hearing just one side. The Court below therefore ought not to have brushed aside the ostensibly adequate reason put forth by the petitioner/defendant while seeking such relief in the present case.

The Civil Revision Petition is accordingly allowed. The order under revision is set aside and the delay on the part of the petitioner/defendant, in filing the application to set aside the *ex parte* decree dated 14.01.2014 in O.S.No.555 of 2013, is condoned. I.A.No.1156 of 2014 in O.S.No.555 of 2013 is allowed and the said *ex parte* decree is also set aside. O.S.No.555 of 2013 is restored to the file of the learned II Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, who shall endeavour to expeditiously try and adjudicate the suit on merits and in accordance with law.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

SANJAY KUMAR, J

11th APRIL, 2017

**Note: LR copy to be marked
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