

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.2791 of 2014

ORDER :

This Revision is filed under Section 115 of the CPC challenging the order dt.28.07.2014 in I.A. No.3559 of 2008 in I.A. No.2179 of 1973 in I.A. No.4945 of 1972 in O.S. No.18 of 1962 on the file of the Chief Judge, City Civil Court, Hyderabad.

O.S. No.18 of 1962

2. Respondents 13 to 19/Plaintiffs had filed the said suit before the Additional Judge, City Civil Court, Hyderabad on 19.04.1961 against Aga Askari Hussain (D-1), T.H. Subbarao (D-2), Sultan Alam Begum (D-3), Askar Nawaz Jung (D-4-husband of R-21 and father of R-22 to 31), Kazim Nawaj Jung (D-5), Fathima Sultan Begum (D-6, whose legal representatives are Respondents 2 to 4 herein), Razia Sultan Begum (D-7/R-43), Khairunnissa Begum (D-8/R-44), Zohra Sultan Begum (D-9/R-42), Ashrafunnisa Begum (D-10/R-45), Mirza Najaf Ali Khan (D-11). Defendant No.11 Mirza Najaf Ali Khan was impleaded in his capacity as Receiver-cum-Commissioner of the estate of Salarjung III.

3. The said suit was an Administrative suit under Order XX Rule 13 CPC to administer the assets of a deceased Nawab Sajid Yar Jung. In the suit, it is contended by plaintiffs that Sajid Yar Jung died leaving a Will whereunder he bequeathed 1/3rd interest in his properties in favour of Respondent Nos.13 to 19 herein. He had two sons (i) Kazim Nawaz Jung (Defendant No.5/Respondent No.20) and (ii) Askar Nawaz Jung (the

predecessor-in- interest of Respondent Nos.21 to 32 herein). Defendant Nos.7 to 10/Respondent Nos.41 to 45 were his creditors. Defendant No.6 is also one of his daughters.

4. Several properties were mentioned in the schedule to the suit.

5. One of the items of the property which was subject matter from the said suit was a property called “Wood Cock House, Ooty (present day ‘Udhagamandalam’)” said to be worth Rs.3 lakhs at that time.

6. *In this Revision, we are concerned only with this property.*

7. Pending the suit, Defendant No.1 died and his legal representatives were impleaded as Defendants 12 to 22.

8. A preliminary decree was passed on 11.03.1964 in O.S. No.18 of 1962 whereunder one K. Neeladri Raju, Advocate was appointed the Receiver to carry out the several directions given thereunder.

9. An appeal CCCA No.22 of 1964 was filed against the said preliminary decree in the High Court.

10. In the said appeal, there was a compromise between all the parties and an interim final decree was passed on 26.06.1964. Under this compromise-interim final decree, Sri K. Neeladri Raju, was discharged and the two sons of the deceased, namely, Kazim Nawaz Jung and Askar Nawaz Jung as well as second plaintiff in the suit, were appointed as joint Receivers.

11. One such matter which was agreed to be compromised was the sale of ‘Wood Cock Hall at Ooty’ by the Receivers-cum-Commissioners either

privately or public auction or in any manner they think fit and to deposit the sale proceeds in the court. It was agreed that after paying the court fee, estate duty, stamp duty and the remuneration of the discharged Receiver-cum-Commissioner should be paid in the first instance; the share of Kazim Nawaz Jung (Defendant No.5) was to be separated for meeting the liabilities of Sajid Yar Jung, if any therefrom, and the balance was to be paid to the legatees on their filing full or part satisfaction of the memo as the case may be; and that in case the sale proceeds of the Wood Cock Hall at Ooty are found to be insufficient to satisfy the claims of the legatees and others, then the claims of the legatees shall be paid by auctioning the other Matruka of late Nawab Sajid Yar Jung excluding the share of Defendant No.5 in execution of this decree.

12. Thereafter the sale was conducted by the Receivers-cum-Commissioners on 12.02.1973 of Wood Cock Hall at Ooty for Rs.5,60,000/- in terms of the interim final decree in O.S. No.18 of 1962. The Court below accepted offer of Petitioner Nos.1 to 3, S.V. Rangaiah Chettiar (father of 3rd Petitioner) and R. Govindaraj (son of S.V. Rangaiah Chettiar) on 12.02.1973 in SR No.4945 of 1972; and a certificate of sale dt.03.11.1973 was issued in their favour.

I.A. No.2179 of 1973

13. This sale in favour of the above persons was challenged by Fathima Sultana Begum (Defendant No.6 in O.S. No.18 of 1962) by filing I.A. No.2179 of 1973 on 12.11.1973 in O.S. No.18 of 1962 invoking Section 47, Order 21 Rule 90 CPC and Section 151 of CPC on several grounds including

a ground that it was vitiated for inadequacy of consideration and material irregularity in publishing or conducting it which is said to have resulted in substantial injury. There was also an allegation that fraud and collusion took place between the joint Receivers and the purchasers which vitiated the sale.

14. The Receivers filed a counter denying the allegations of fraud and collusion and stating that in the circumstances, the offer of Petitioners 1 and 2 herein was the highest and that, they and the Court had acted in the best interests of the estate and there were no grounds for setting aside the said sale. They also contended that neither Order 21 Rule 90 nor Section 47 of CPC is applicable.

The order dt.14.12.1973 in I.A. No.2179 of 1973

15. By order dt.14.12.1973, I.A. No.2179 of 1973 was dismissed by the Chief Judge, City Civil Court, Hyderabad holding that the sale was affected by the Receivers appointed in an Administration suit, and so provisions of Order 21 CPC are not applicable to sales affected by the such Receivers, and consequently Order 21 Rule 90 CPC/Section 47 CPC is also not applicable. The I.A. was thus dismissed on this preliminary ground itself without going into or enquiring into merits of the petition.

AAO No.15 of 1974

16. Challenging the same, AAO No.15 of 1974 was filed before this Court by Defendant No.6, Fathima Sultana Begum.

Order dt.21.07.1976 in A.A.O.No.15 of 1974¹

17. A Division Bench of this Court on 21.07.1976 allowed the said AAO and held that the sale of Wood Cock Hall, Ooty was affected by the Receivers subject to the supervision of the Court in an Administrative suit; and so the said sale is not and cannot be governed by the provisions of Order 21 CPC and so under Order 21 Rule 90 CPC, I.A. No.2179 of 1973 was not maintainable.

18. It did not feel necessary to decide whether Section 47 of CPC is attracted, but held that the Court must have the power to rectify any illegality or any other grave irregularity; that if a fraud has been perpetrated, or if there is any collusion or any other circumstance which vitiates the said sale, the Court must have the necessary power to investigate the same and to set it right.

19. It therefore held that the said I.A. No.2179 of 1973 is maintainable under Section 151 CPC and the Court below ought not to have dismissed it on a preliminary point, without going into the merits. It made it clear that it is not accepting or disbelieving the allegations made by the appellant therein/Defendant No.6, but the Court below ought to investigate and come to a finding upon the material before it. It therefore remanded the matter back to the trial Court for fresh consideration.

¹ AIR 1977 A.P. 55

Order dt.14.11.1995 in Civil Appeal No.1081 of 1976

20. This order was challenged by the Petitioner before the Supreme Court of India. The Special Leave Petition No.2523 of 1976 filed by the Petitioners was numbered as Civil Appeal No.1081 of 1976 and came to be dismissed on 14.11.1995 upholding the order dt.21.07.1976 of the Division bench of this Court in AAO No.15 of 1974.

21. Thereafter the matter I.A. No.2179 of 1973 was taken up by the Chief Judge, City Civil Court, Hyderabad.

The death of Defendant no.6

22. While the matter was pending, the 6th Defendant Fatima Sultana Begum died on 02.03.2004.

I.A.No.3559 of 2008

23. I.A. No.3559 of 2008 was filed under Section 5 of the Limitation Act, 1963 by Respondent No.s 2 to 4 herein, who are her legal heirs, to condone the delay of 1686 days in filing an application to come on record as her legal representatives in I.A. No.2179 of 1973 invoking Section 5 of the Limitation Act, 1963.

24. It is their contention in the said application that application had been filed on behalf of Hamid Hussain Khan and others (Defendant No.26 and others) to bring them on record as the legal heirs of Defendant No.6, who had filed I.A. No.2179 of 1973; Respondent Nos.2 to 4 were informed about this application filed to bring them on record in I.A. No.2179 of 1973; that

they did not realize that they have to independently file application to come on record; unfortunately, applications filed by Defendant No.26 were returned with certain objections, and in the process, there was further delay; and realizing that it is in their own interest to come on record in I.A. No.2179 of 1973, they had filed this application I.A. No.3559 of 2008.

25. It is contended that Respondents 2 to 4 are also of advanced age, that they are not in position to keep day to day track of the proceedings; in view of pendency of other applications filed before the court to bring them on record as legal heirs of deceased Defendant No.6, appropriate steps could not be taken on their own to come on record.

26. They also claimed that they were not well versed with judicial proceedings and were under a bonafide impression that in view of pendency of the application filed by Defendant No.26 to bring them on record, there is no necessity to file an independent application on their own.

Counter affidavit of 1st Petitioner in I.A.No.3559 of 2008

27. Counter affidavit was filed by first Petitioner to I.A. No.3559 of 2008.

28. He denied that Respondents 2 to 4 are legal heirs of Defendant No.6.

29. According to him, I.A. No.2179 of 1973 had abated on and since 01.06.2004 since Respondents 2 to 4 did not choose to come on record as legal representatives of Defendant No.6.

30. It is also pointed out that S.V. Rangaiah Chettiar, R. Govindaraj and L. Nihal Chand shown as Respondents 6, 7 and 11 in the

said I.A died on 29.11.1987, 16.04.1999 and 02.02.2001 respectively and their legal representatives had not been impleaded in I.A. No.2179 of 1973.

31. He stated that he, along with Petitioner Nos.1 to 15, had purchased the property known as Woodcock Hall situated at Ooty from the Receivers appointed by the Court for valid consideration and the sale in their favour has been confirmed by this Court. The Sale Certificate has been issued by this court on 03.11.1973 and possession has also been delivered to them in pursuance of the same. Since then, they have been legally and validly in possession and enjoyment of the said property.

32. Till the death of the 6th Defendant (the Petitioner in I.A. No.2179 of 1973) excepting the enquiry as directed by the High Court in CMA No.15/74 nothing was pending in the trial Court, and the petition in I.A. No.2179 of 1973 had abated on and since 01.06.2004, and nothing is now pending before the trial Court to be enquired into.

33. He further submitted that the Petitioners were fully aware that late Fathima Sultana Begum (Defendant No.6) had filed the petition in I.A. No.2179 of 1973 and if they were desirous to pursue the said petition, they ought to have filed an application before the Court to implead them as Petitioners 2 to 4 in the said I.A within 90 days from the date of hr death but they did not choose, or elect to do so within the time allowed under the law, and the present petition had been filed after more than 1657 days since the death of Fathima Sultana Begum.

34. He submitted that the Respondent Nos.2 to 4 on their own would never have filed this petition to condone the delay of 1657 days in filing the petition to implead them as the legal heirs of the 6th Defendant/ deceased Petitioner in I.A. No.2179 of 1973, and they have been set up by Defendant No.s 17 and 26 in the suit to file this petition as well as the two connected petitions solely to harass the Petitioners even though they themselves had not chosen to file any petition for setting aside the sale of the property in question conducted by the Receivers. He alleged that the Respondent Nos.2 to 4 have only lent their names to these proceedings at the behest of Defendant Nos.17 and 26.

35. He contended that on the Respondent Nos.2 to 4's own showing, as per the allegations in para 3 of the affidavit filed by them in I.A.No.3559 of 2008, the Court had returned the petition allegedly filed by Defendant No.26 and others with certain directions and the said petition had thereafter not seen the light of the day. It is reiterated that it is only thereafter, the 26th Defendant and the others in that unnumbered petition set up the Respondent Nos.2 to 4 to file the present petition in an attempt to achieve what they could not achieve and the Respondent Nos.2 to 4 have therefore merely lent their names in the matter.

36. According to him, the affidavit filed in support of the petition does not disclose any valid or tenable grounds for condoning the delay of 1686 days in filing the application for impleading the Respondent Nos.2 to 4 as Petitioners 2 to 4 in the petition I.A. No.2179 of 1993; that the delay was deliberate and willful; and the Respondent Nos.2 to 4 are bound to explain

every day's delay which they have failed to do. It is contended that on account of the abatement of the petition I.A. No.2179 of 1973 and passing of time of more than 4 years thereafter, valuable rights have accrued in favour of Petitioners, which rights cannot be lightly disturbed or negated or denied by any Court of Justice.

The Order dt.28.07.2014 in I.A.No.3559 of 2008 in I.A.No.2179 of 1973 In S.R. No.4945 of 1972 in O.S.No.18 of 1962

37. By order dt.28.07.2014 the Court below allowed I.A.No.3559 of 2008 in I.A.No.2179 of 1973.

38. After referring to the contentions of the parties, it stated that Respondent Nos.2 to 4 had already come on record as per O.S.No.156 of 1980; Petitioners are third parties objecting for allowing application to bring Respondent Nos.2 to 4 on record as legal representatives of the deceased Petitioner in I.A.No.2179 of 1973 (6th Defendant); and if the said application is allowed, there would not be any loss to the Petitioners. It also observed that Petitioners did not file any document to disprove the contentions of Respondent Nos.2 to 4. It also referred to the contention of the counsel for Respondent Nos.2 to 4 that there is no need to file an application under Section 5 of the Limitation Act, 1963 to bring on record legal representatives of Defendant No.6, and held that allowing the I.A.No.2179 of 2013 and impelading Respondent Nos.2 to 4 will not affect the rights of the Petitioners. It held that it is for Petitioners to contest the main case if they have got any objection about the rights of the parties and expressed the view that the delay has been satisfactorily explained by giving adequate reasons in

the affidavit filed in support of I.A.No.2179 of 1973 by the Respondent Nos.2 to 4. It also placed reliance on the decision of the Supreme Court in **State (NCT of Delhi) Vs. Ahmed Jaan²**.

The present Revision

39. Assailing the said order dt.28.07.2014 in I.A.No.3559 of 2008 in I.A.No.2179 of 1973 in S.R.No.4945 of 1972 in O.S.No.18 of 1962 of the Chief Judge, City Civil Court, Hyderabad, the Petitioners have filed this Revision.

40. Sri B.Anjaneyulu, learned counsel for the Petitioners contended that Respondent Nos.2 to 4 were aware of the pendency of the said I.A.No.2179 of 1973; they had adequate legal advise as the matter was contested upto the Supreme Court of India by them in Civil Appeal No.1081 of 1976; when Defendant No.6 died on 02.03.2004, it is the duty of the Petitioners, who claim to be her legal representatives, to file application to come on record as her legal representatives within 90 days; I.A.No.2179/1973 itself has abated on and after 02.06.2004 on the expiry of 90 days under Article 120 of the Limitation Act, 1963; there is no evidence of any application said to have been filed by Hamid Hussain Khan and others (Defendant No.26 and others) to bring Respondent Nos.2 to 4 on record as legal heirs of 6th Defendant; and on the pretext that such application was filed and was allegedly returned, Respondent Nos.2 to 4 cannot file I.A.No.3559 of 2008 with abnormal delay of 1686 days. He contended that there is no sufficient cause shown for condonation of the said period of delay and the Court below therefore ought

² (2008) 14 SCC 582

to have dismissed it. He contended that there is lethargy and negligence on the part of Respondent Nos.2 to 4 which cannot be countenanced and therefore the impugned order deserves to be set aside. He relied upon the decisions in **Balwant Singh (Dead) Vs. Jagdish Singh and others**³ and **Lanka Venkateswarlu (Dead) by LRs. Vs. State of Andhra Pradesh and others**⁴

41. Sri D.Prakash Reddy, learned Senior Counsel appearing for Sri M.A.Muqueet, learned counsel for Respondent Nos.2 to 4, Sri Ali Farooq, learned counsel for Respondent No.45 supported the order passed by the Court below.

42. It is their contention that this Court in its order dt.21.07.1976 in A.A.O.No.15 of 1974 *inter partes* has held that Order 21 Rule 90 C.P.C. has no application and that Section 151 C.P.C. ought to be applied for deciding I.A.No.2179 of 1973; that the observations of the Division Bench in the said order (*that it is the duty of the trial Court to see that sales affected by it are proper and legal and are not vitiated in any manner; and if any such vitiating factor is brought to its notice, it has the power, nay, it is its duty, to investigate the same, and to set it right or remedy it if the allegation in that regard is found to be true*), imply that issues such as abatement of the IA No.2179 of 1973 on account of the death of Defendant No.6/applicant in I.A.No.2179 of 1973 or delay in bringing her legal representatives, ought not to be taken seriously. They also contended that Order 22 C.P.C. also has no application and only Article 137 of the Limitation Act, 1963 would apply and the period of limitation would be

³ AIR 2010 SC 3043

⁴ (2011) 4 SCC 363

three years. They relied upon the Division Bench judgment of the Madhya Pradesh High Court in **Smt.Sayeeda Begam and another Vs. Ashraf Hussai⁵** , **Arun Lal and others Vs. Union of India and others⁶** and **N.Balakrishnan Vs. M.Krishna Murthy⁷**.

The Consideration by the Court

43. First I shall consider whether Art.120 of the Limitation Act,1963 applies at all to I.A.No.2179 of 1973 and whether it was incumbent on the part of the Respondent no.2 to 4 to come on record within 90 days from the date of death of the Petitioner in the said I.A.

44. In **Lynette Fernandes Vs. Gertie Mathias⁸**, a probate of a Will executed by one Richard was granted in favour of his wife, the Respondent, on 09.09.1960. The appellant, one of their children, though she attained majority on 09.09.1965, filed on 25.01.1996, an application under Section 263 of the Succession Act, 1925 before the District Court concerned, seeking revocation of the probate granted to the Respondent on 09.09.1960. The trial Court dismissed it both on merits and also on the ground of limitation. This decision was upheld by the High Court. The Supreme Court also confirmed the said decision holding that *Article 137 of the Limitation Act would be attracted to any petition or application filed under any Act to a Civil Court*. It held that the 3 years limitation as prescribed under Article 137 runs from the date the appellant attained the age of majority i.e. 3 years from 09.09.1965. Since she did not choose to initiate

⁵ AIR 1980 M.P.12

⁶ AIR 2011 SC 506

⁷ (1998) 7 SCC 123

⁸ (2018) 1 SCC 271

any proceedings till 25.01.1996, 31 years after she attained majority, her application for revocation of grant of probate was rightly rejected.

45. In **Jaswant Singh and others Vs. Parkash Kaur and another**⁹, the Supreme Court considered a case where an application was filed by a Defendant for setting aside ex parte decree under Order 9 Rule 13 C.P.C. The said application was dismissed for default on 19.10.2001. The Defendant died on 20.11.2001 within a month and thereafter his legal representatives filed an application on 21.08.2002 for restoration of the Order 9 Rule 13 application. This was objected to by the Plaintiff. The trial Court dismissed it on 23.12.2005. The legal representatives of the Defendant challenged it in an appeal filed under Order 43 Rule 1 C.P.C. The said appeal was allowed and the application under Order 9 Rule 13 C.P.C. was restored. This was challenged in Revision before the High Court. The High Court allowed the Revision, set aside the order of the District Judge and restored the order of the trial Court. The Supreme Court held firstly that against an order rejecting the application to restore the Order 9 Rule 13 C.P.C. application, an appeal under Order 43 Rule 1 (c) C.P.C. is maintainable. Secondly, it held that Section 141 C.P.C., through its explanation, covers proceedings under Order 9 C.P.C. and so application dt.21.08.2002 to recall the order dt.19.10.2001 is also a miscellaneous proceeding; that Article 122 of the Limitation Act, 1963 which prescribes only 30 day time limit for filing application for restoration under Order 9 Rule 9 C.P.C. would not apply *and Article 137 of the Limitation Act, 1963*

⁹ (2018) 12 SCC 249

would apply. It held that Section 5 of the Limitation Act, 1963 was attracted to the application filed for restoration, but since the application for restoration was filed within 30 days itself, and valid cause was shown, the rejection of the application of the legal heirs of the Defendant for restoration of the application under Order 9 Rule 13 C.P.C. cannot be sustained.

46. In the above decisions also, it has thus been held that for applications in suits, Article 137 of the Limitation Act, 1963 is alone attracted and not any of the other Articles contained in the Schedule thereto.

47. In **Smt.Sayeeda Begam and another** (5 supra), before the Division Bench of the Madhya Pradesh High Court, a question arose whether provisions of Order 22 C.P.C. r/w Section 141 C.P.C. would apply to proceeding initiated under Order 9 C.P.C. for restoration of a suit dismissed for default. The Madhya Pradesh High Court referred to Section 141 C.P.C. which stated that the procedure provided in the Code in regard to suits shall be followed, *as far as it can be made applicable*, in all proceedings in any Court of Civil jurisdiction; but however that penal provisions of abatement contained in Order 22 C.P.C., in case an application for substitution is not filed within 90 days, would not apply to an application for restoration of a suit filed under Order 9 C.P.C. It referred to Article 120 of the Limitation Act, 1963 and observed that it refers to the date of death of the Plaintiff, Appellant, Defendant or Respondent; and it is not possible to read into Article 120 “an applicant” for “Plaintiff” or “a non-applicant” for a “Defendant”. It declared that application for substitution in such a case would be governed by the residuary article i.e. Article 137 of the Limitation

Act, 1963, there being no special provision. Thus this decision is also in line with the above referred Supreme Court decisions.

48. Though learned counsel for Petitioners disputed the said legal position, he did not cite any authority taking a contrary view.

49. The reasoning given in the above decisions, in my considered opinion, would apply to the instant case for counting the period of limitation for bringing on record the legal representatives of the deceased 6th Defendant i.e. Respondent Nos.2 to 4 also, and Article 137 of the Limitation Act, 1963 alone would be attracted and not Article 120.

50. If Article 137 of the Limitation Act, 1963 is taken into account, then the period of limitation is 3 years when the right to apply accrued.

51. In the instant case, the right to apply 'to come on record as legal representatives of the 6th Defendant/applicant in I.A. No.2179 of 1973' accrued to the Respondent Nos.2 to 4 on the death of 6th Defendant on 02-03-2004.

52. But the application I.A.No.3559 of 2008 was filed by them on 13.10.2008 after a delay of 4 years, 7 months and 11 days.

53. If we deduct the 3 year period prescribed under Article 137, the period of delay would come to 1 year, 7 months and 11 days i.e. 586 days.

54. The next question is '*whether sufficient cause has been shown by the Respondents 2 to 4 to condone the said delay of 586 days in filing the*

application to come on record as legal representatives of the Petitioner in I.A. No.2179 of 1973?’

55. One of the reasons, according to the Respondents 2 to 4, for the delay is that earlier applications had been allegedly filed on behalf of Hamid Hussain Khan and others (Defendant No.26 and others) to bring on record the legal heirs of Defendant No.6, who had filed I.A. No.2179 of 1973; that Respondent Nos.2 to 4 were informed about these applications filed to bring them on record in I.A. No.2179 of 1973; that they did not realize that they have to independently file application to come on record; unfortunately, applications filed by Defendant No.26 were returned with certain objections, and in the process, there was further delay; and realizing that it is in their own interest to come on record in I.A. No.2179 of 1973 on their own, they had filed this application I.A. No.3559 of 2008.

56. There is no material placed on record by Respondents 2 to 4 about any applications allegedly filed by Defendant No.26 and others to bring them on record as legal representatives of deceased 6th Defendant/Petitioner in I.A. No.2179 of 1973. Not even the date of filing of such applications or S.R. No. which would be given by the trial court to the said applications, had they been filed before it, even if they were not numbered for any reason, have not been furnished by the Respondents 2 to 4. In the absence of such material, it is not possible to accept the contention of Respondents 2 to 4 that such applications had been filed earlier to bring them on record by Defendant No.26 and others, that they were returned, and they hoped that the said applications would be allowed, and were waiting for them to be decided.

57. It is also contended that Respondents 2 to 4 are of advanced age, that they are not in position to keep day to today track of the present proceedings; in view of pendency of other applications filed before the court to bring them on record as legal heirs of deceased Defendant No.6, appropriate steps could not be taken on their own to come on record. They also claimed that they were not well versed with judicial proceedings.

58. Even if Respondent Nos.2 to 4 were of advanced age, their ages in October, 2008 when I.A. No.3559 of 2008 was filed were 71, 68 and 63 years respectively and on 02.03.2004, when 6th Defendant died, they would be 66, 63 and 58 years respectively. Mere old age cannot be a ground for the delay without evidence of the respondent no.s 2-4 having any health or other problems disabling them from taking the necessary steps

59. Their further plea that they were not well versed with judicial proceedings or they could not keep track of day today developments also cannot be countenanced because the litigation was being contested by 6th Defendant from 1973 till 14.11.1995 upto the Supreme Court. When I.A. No.2179 of 1973 was filed by the 6th Defendant on 12.11.1973, she was 50 years old and she fought the said litigation till 14.11.1995 when she was 72 years old. The family of Respondents 2 to 4 thus had continuous legal advice and access to senior lawyers. Also Respondent No.2 was admittedly a businessman who was reasonably wealthy. So this reason also cannot be accepted as an excuse for condonation of delay of 586 days.

60. In **N. Balakrishnan v. M. Krishnamurthy**¹⁰, the Supreme Court held that condonation of delay is a matter of discretion of the Court and Section 5 of the Limitation Act, 1963 does not say that such discretion can be exercised only if the delay is within certain limit. It held that *length of delay is no matter, acceptability of the explanation is the only criterion*. It also observed that the primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice and the time limit fixed for approaching the court in different situations is not because on the expiry of such time, a bad cause would transform into a good cause. It held that rules of limitation are not meant to destroy the rights of parties, but they are meant to see that parties do not resort to dilatory tactics and seek their remedy promptly. *Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy*. It observed that in every cause of delay, there can be some lapse on the part of the litigant concerned, but that alone is not enough to turn down his plea and to shut the door against him. It declared that if the explanation does not smack of malafides and it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should compensate opposite party for his loss.

¹⁰ (1998) 7 SCC 123

61. In **Perumon Bhagvathy Devaswom v. Bhargavi Amma**¹¹, the Supreme Court explained how Section 5 of the Limitation Act, 1963 is to be construed. It declared:

“ 13....

(i) *The words ‘sufficient cause for not making the application within the period of limitation’ should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words ‘sufficient cause’ in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.*

(ii) *In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased Respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.*

(iii) *The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.*

(iv) *The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to a lawyer’s lapses more leniently than applications relating to a litigant’s lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for*

¹¹ (2008) 8 SCC 321

condonation of delay in refiling the appeal after rectification of defects.

(v) Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting Respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal."

62. In **Katari Suryanarayana v. Koppiseti Subbarao**¹², an application for setting aside the abatement and bringing the legal heirs of the deceased on record was filed in that case with a delay of 2381 days. The reason given for not filing the said applications was found not satisfactory by the Supreme Court. It referred to its earlier decision in **Perumon Bhagvathy Devaswom (11 supra)** and held on facts that it is not in dispute that the appellants were neighbours, that they were co-sharers, and the respective dates of death of Respondents 2 and 3, thus, were known to them; it is difficult to conceive that the Petitioners were not in touch with their advocates from 1999 to December 2006; if not every week, they are expected to contact their lawyers once in a year; and ignorance of legal consequence without something more would not be sufficient to condone such a huge delay. It also held that the appellants are literates, that they have been fighting their cases for a long time and that the High Court in its impugned judgment has categorically arrived at a finding that no sufficient cause has been shown for

¹² (2009) 11 SCC 183

the purpose of condonation of delay in bringing on record the names of the heirs or legal representatives of the deceased Respondents 2 and 3.

63. In *Balwant Singh v. Jagdish Singh and others*¹³, the Supreme Court held:

“25. We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of “reasonableness” as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

27. The application filed by the applicants lacks in details. Even the averments made are not correct and ex facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflects normal behaviour of a common prudent person on the part of the applicant, the Court

¹³ (2010) 8 SCC 685

would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party.”

64. In Lanka Venkateswarlu v. State of Andhra Pradesh¹⁴, the Supreme Court reiterated the above principle and set aside the order of the High Court condoning delay of 3703 days in bringing on record the legal representatives of the deceased Respondent. It found that the High Court recorded that reasons given for seeking condonation of delay were not acceptable, but it still condoned the delay erroneously. It declared:

“28. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as “liberal approach”, “justice oriented approach”, “substantial justice” cannot be employed to jettison the substantial law of limitation. Especially, in cases where the court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.”

65. In Basawaraj and another v. Special Land Acquisition Officer¹⁵, the Supreme Court held that there is no strait jacket formula to apply when condonation of delay is sought. Though the expression “sufficient cause” in Section 5 of Limitation Act, 1963 should be given a liberal interpretation to ensure that substantial justice is done, where negligence, inaction or lack of bonafides are imputed to the party seeking condonation of delay, delay cannot be condoned. It reiterated that statute of limitation is founded on

¹⁴ (2011) 4 SCC 363

¹⁵ (2013) 14 SCC 81

public policy and an unlimited limitation would lead to a sense of insecurity and uncertainty. It observed that limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. It declared that in case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found not to have acted diligently or remained inactive, there cannot be a justified ground to condone the delay.

66. In my opinion, by remaining inactive, and by not acting diligently even if the period of delay is reduced to 586 days from 1686 days by applying Art.137 of the Limitation Act,1963, still the delay is unduly long and no sufficient cause has been shown by the Respondent No.s 2-4 to condone the same. In my opinion, the Court below erroneously held that delay has been satisfactorily explained by giving adequate reasons.

67. Valuable rights had accrued in the intervening period in favor of the petitioners which cannot be taken away now by allowing IA.No.3559 of 2008.

68. Though the Senior Counsel for the Respondents 2 to 4 sought to contend that the delay requires to be condoned since it has been held by the Division Bench in its order dt.21.07.1976 in AAO No.15 of 1974 that merits of the allegation levelled by the 6th Defendant with regard to alleged collusion and fraud in conduct of sale by the Receivers in favour of Petitioners should be considered on merits, the substantive law of limitation

cannot be jettisoned as observed in **Lanka Venkateswarlu's** case (14 supra) and **Basawaraj** case (15 supra). In this view of the matter, I am of the opinion that the order passed by the Court below cannot be sustained.

69. Accordingly, the CRP is allowed; order dt.28.07.2014 in I.A. No.3559 of 2008 in I.A. No.2179 of 1973 in I.A. No.4945 of 1972 in O.S. No.18 of 1962 of the Chief Judge, City Civil Court, Hyderabad is set aside; and the said I.A. No.3559 of 2008 is dismissed. No costs.

70. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-08-2019
MRKR/VSV

