

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

I.A.No.1 of 2019
in/ and
C.C.C.A.No.239 OF 2019

COMMON ORDER:

I.A.No.1 of 2019 is filed to condone the delay of 1582 days in filing the appeal.

2. Heard the learned counsel for both sides and perused the record.

3. Learned counsel for the petitioners would submit that I.A.No.117 of 2017, which was filed under Section 5 of the Limitation Act, to condone the delay in filing the application to set aside the *ex parte* decree dated 24.11.2014 passed in O.S.No.1954 of 2013 by the II Senior Civil Judge, Hyderabad, was dismissed. The *ex parte* decree was passed without notice to the petitioners. Immediately after dismissal of I.A.No.117 of 2017, the subject appeal was filed to set aside the said *ex parte* decree and judgment. The petitioners are farmers. The petitioners have got merits in the case. If the application is not allowed, the petitioners would suffer irreparable loss. The Court below erroneously passed the *ex parte* decree and ultimately prayed to condone the delay of 1582 days in filing the appeal before this Court.

4. Learned counsel for the respondent/plaintiff would contend that having entered appearance in the original suit, the revision petitioners/defendants abstained from proceeding with the suit. After providing ample opportunity to the petitioners, the Court below was pleased to set the petitioners *ex parte*, thereafter *ex parte* decree was passed on 24.11.2014. On receipt of summons in execution proceedings, the petitioners

appeared through their counsel. Even then they did not file application to set aside the *ex parte* decree. After an enormous delay, they filed I.A.No.117 of 2017. Therefore, it was dismissed on merits. There are no justifiable reasons to condone the delay of 1582 days caused in filing the subject appeal and relied on the decisions reported in *Union of India v. Nripen Sarma* (AIR 2011 SC 1237) and *Challagulla Ratna Manikyam v. Boppana Seetharama Raju* (2015(3)ALD 142), wherein it was held that as the delay was not explained, the application under Section 5 of the Limitation Act is liable to be dismissed, and ultimately prayed to dismiss the application.

5. In view of the submissions made by both sides, the point that arises for determination is:

“Whether the delay of 1582 days can be condoned as prayed for?”

6. POINT:- It is evident from the record that the petitioners have filed I.A.No.117 of 2017 under Section 5 of the Limitation Act to condone the delay in filing the application to set aside the *ex parte* decree dated 24.11.2014. The said I.A. was dismissed on 21.04.2018. Thereafter, the present I.A. was filed by the petitioners on 26.06.2019. The main contention of the petitioners is that the summons were not served in the original suit. The service of summons is well considered by the Court below while dealing with application in I.A.No.117 of 2017 and was negated holding that the summons were served to the petitioners and they engaged a counsel. Even after the said dismissal, the petitioners have filed the subject appeal with a delay of more than four years by simply stating that the pendency of application in I.A.No.117 of

2017 caused delay in filing the subject appeal. It is also stated on behalf of the petitioners that the petitioners being small farmers, they would suffer irreparable loss and injury, if the application is not considered. Though there are five petitioners, none of them were diligent in pursuing the remedies available under law. Section 5 of the Limitation Act reads as under:

“5. Extension of prescribed period in certain cases:- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

When the petitioners filed an application seeking condonation of delay, they have to explain day-to-day delay caused in filing the appeal, but no single reason is explained by the petitioners in terms of the mandate given under Section 5 of the Limitation Act. There is enormous delay and there is no explanation for the said delay. There is no justifiable reason to condone the said delay. Hence, the application is devoid of merit and is liable to be dismissed.

7. In the result, I.A.No.1 of 2019 is dismissed. Consequently, C.C.C.A.No.239 of 2019 stands rejected.

The Miscellaneous Petitions, if any, pending shall stand closed. No costs.

Dr. SHAMEEM AKTHER, J

Date: 12.02.2020
ssp