

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

WEDNESDAY, THE TENTH DAY OF JUNE
TWO THOUSAND AND TWENTY

**PRESENT
THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER**

I.A.NO.02 OF 2020
AND
C.C.C.A. NO: 01 OF 2020

Common C.T. in IA No.02 of 2020 and CCCA No.01 of 2020:

Between:

1. Smt. C.Shakuntala, W/o. Late C.Mallaiah,
2. C.Gouri Shankar, S/o. Late C.Mallaiah,

...PETITIONERS/ APPELLANTS/ DEFENDANTS 1 AND 2

AND

1. Smt.C.Durga Bai, W/o. Late C.Hanumanth Rao
2. C.Shailaja, W/o. P.Raj Kumar Reddy,
3. C.Sarika, W/o. V.Rakesh

.....RESPONDENTS/ RESPONDENTS/ PLAINTIFFS

4. C.Nageshwar Rao, S/o. Late C.Mallaiah,
(Respondent No.4 is formal party)

...RESPONDENT/ RESPONDENT/ DEFENDANT NO.3

Petition under Section 5 of Limitation Act, R/w.151 of CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to condone the delay of 920 days in filing the CCCA for setting aside the preliminary decree passed by the Hon'ble XIX Senior Civil Judge, City Civil Court, Secunderabad dt. 27/12/2016 in file No. O.S. No.505/11 dated 27/12/2016.

CCCA NO.01 OF 2020:

Appeal under Section 96 of CPC against the Judgment and decree made in O.S. No.505 of 2011 dated 27/12/2016 on the file of the Court of the XIX Additional Senior Civil Judge, at Secunderabad.

For the Appellants : SRI KAATRAPATI SATYANARAYANA, Advocate

For the Respondents : NONE APPEARED

The Court delivered the following: JUDGMENT

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

I.A.No.2 of 2020
and
C.C.C.A.No.1 of 2020

COMMON JUDGMENT:-

C.C.C.A No.1 of 2020 is filed by the appellants/defendant Nos.1 & 2, challenging the judgment and decree, dated 27.12.2016, passed in O.S.No.505 of 2011 by the XIX Additional Senior Civil Judge at Secunderabad.

2. I.A.No.2 of 2020 is filed by the petitioners/appellants to condone the delay of 920 days in filing the appeal.

3. Heard the learned counsel for the petitioners/ appellants and perused the record.

4. The learned counsel for the petitioners/appellants would contend that the judgment impugned in the appeal is an *ex parte* judgment. The petitioners/appellants are senior citizens. Though the petitioners/appellants were in touch with their advocate on record in the proceedings before the Court below regularly, at no point of time their advocate informed them about the *ex parte* judgment passed by the Court below. There are no laches on the part of the petitioners/appellants. The delay is neither willful nor wanton. There are fair chances of success of the petitioners/appellants in this appeal and ultimately prayed to condone the delay of 920 days in filing the appeal.

5. As seen from the material on record, the delay is huge, i.e., 920 days. The Court below, in the impugned judgment, held as follows:-

"...the defendants did not turn up to appear before this Court even after several adjournments and conditional orders and hence, the defendants' side evidence was closed"

"...though the defendant No.1 filed written statement, but the defendants failed to rebut the plaintiff's case by producing any supporting evidence on their behalf."

6. Under those circumstances, the Court below was left with no other option but to set the petitioners/appellants *ex parte*. It is settled law that for condoning the delay in filing an appeal, the petitioner/s have to explain the day to day delay. Section 5 of the Limitation act, 1963, mandates that any appeal or application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure Code, 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.

7. In the instant case, the petitioners/appellants, in the affidavit filed in support of I.A.No.2 of 2020, averred as follows:

"Petitioner No.1, being senior citizen and petitioner No.2 being employee could not able to pursue the matter with personal visits to court and petitioners were under the impression that the counsel will call on all necessary times whenever their presence is required in the Court as well as office of the counsel and meeting the counsel through cell phone regularly. But no

point of time the counsel of the petitioners informed about the ex parte decree passed by the Hon'ble Court on 27.07.2016."

"Petitioners received the notice in I.A.No.76 of 2019 in 77 of 2019 issued by the trial Court to appear and to file the counter in the said I.As. Then the petitioners approached the counsel and the counsel stated that I also do not know about the ex parte order on seeing of the same, the counsel also got shocked and surprised."

8. As seen from the above averments of the petitioners/appellants, it is clear that the petitioners/appellants have not pursued their matter diligently. The petitioners/appellants have thrown the entire blame on their advocate for setting them ex parte in the proceedings before the Court below. They ought not have pleaded so. It reflects callousness, lethargy and deliberate laches in prosecuting the subject original suit. When a matter is entrusted to an advocate, it is the duty of the parties to pursue the matter diligently with their advocate and take all remedial measures such as filing of written statement and other documents on time. The ignorance pleaded by the petitioners/appellants is not a ground to condone the huge delay of 920 days. Moreover, the petitioners/appellants are senior citizens. In such an event, they ought to have pursued the remedies expeditiously. Further, there are two petitioners. Either of them would have pursued the matter with their advocate concerned, so also with the Court. There are grave laches on the part of the petitioners/appellants in pursuing the matter before the Court below. No justifiable reasons are assigned by the petitioners/appellants to condone the abnormal delay of 920

days in filing the appeal. There are no merits in I.A.No.2 of 2020 and as such, I.A.No.2 of 2020 is liable to be dismissed.

9. Accordingly, I.A.No.2 of 2020 is dismissed. Consequently, C.C.C.A.No.1 of 2020 stands rejected. No costs.

Miscellaneous petitions, if any, pending in this unregistered appeal shall stand dismissed.

//TRUE COPY//

Sd/-K.SREENIVASA RAO
DEPUTY REGISTRAR


SECTION OFFICER

To

1. The XIX Additional Senior Civil Judge, City Civil Court, at Secunderabad.
2. One cc to Sri K.Satyanarayana, Advocate (OPUC)
3. Two CD Copies

Kj.



HIGH COURT

DATED:10/06/2020

COMMON JUDGMENT

I.A.No.02 of 2020

and

CCCA.No.01 of 2020



Dismissing the IA and
rejecting the CCCA, without costs.

④ VLV
20/6/20