

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

**WEDNESDAY, THE THIRTEENTH DAY OF APRIL
TWO THOUSAND AND TWENTY TWO**

**PRESENT
THE HONOURABLE SRI JUSTICE A.VENKATESHWARA REDDY**

CIVIL REVISION PETITION NO: 138 OF 2021

Petition under Article 227 of Constitution of India, aggrieved by the Order dated 31/10/19 in IA No.616 of 2017 in OS No.52/2016 on the file of the Court of the Additional Junior Civil Judge, Jangaon.

Between:

1. Koduru Srinivas Reddy, S/o.K. Vardha Reddy,
2. Koduru Gowtham Reddy, S/o.K. Vardha Reddy,

**...PETITIONERS/ RESPONDENT/
PETITIONER/ DEFENDANT**

AND

Koduru Maheshwar Reddy, S/o. late Laxmi Narsimha Reddy,

...RESPONDENT/PETITIONER/ RESPONDENT

IA NO: 1 OF 2021

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to stay all further proceedings in pursuance of the ex-party Judgment and Decree dated 30/10/2019 made in O.S.No.52 of 2016 pending finalization of the C.R.P.

For the Petitioners : M/s JALLI KANAKAIAH, Advocate

For the Respondent : SRI VIVEK JAIN, Advocate

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL REVISION PETITION No.138 OF 2021

ORDER:

This Civil Revision Petition is filed by the petitioners/defendant Nos.1 and 2 assailing the order dated 31.10.2019 in I.A.No.616 of 2017 in O.S.No.52 of 2016 on the file of the learned Additional Junior Civil Judge at Jangoan.

2. The application in I.A.No.616 of 2017 was filed by the petitioners/defendants under Section 5 of Limitation Act to condone the delay of 105 days from 19.10.2017 to 21.12.2017 in filing an application to set aside the ex-parte decree dated 19.09.2017. The trial Court having considered the rival contentions and material available on record, dismissed the said application with an observation that the reasons furnished by the petitioners are not supported by any material and the petitioners failed to submit sufficient cause for the delay and not entitled for condonation of delay. Feeling aggrieved by the said orders, the defendant Nos.1 and 2 have filed this Civil Revision Petition.

3. Heard learned counsel for the petitioners and the respondent. The submissions made on either sides are given due consideration of this Court.

4. For the sake of convenience, the parties are referred to as plaintiff and the defendants as arrayed in the original suit.

5. The plaintiff has filed original suit in O.S.No.52 of 2016 for perpetual injunction restraining the defendants and their men from interfering with the peaceful possession and enjoyment of the suit schedule property. As per the record, the defendants have made their appearance before the trial Court on 31.03.2016 and inspite of granting more than ten adjournments till 06.06.2017 both the defendants have failed to file written statement and finally on 06.06.2017 they were set ex-parte and thereafter ex-parte evidence was recorded and considering the material available on record, judgment and decree was passed on 19.07.2017 against both the defendants.

6. The trial Court has dismissed the said application in I.A.No.616 of 2017 stating that there is lack of diligence on the part of the petitioners in prosecuting the matter and the

averments in the affidavit filed by the petitioner No.2 are not supported by any material.

7. On a careful perusal of the averments of the affidavit filed in support of the application the second petitioner has stated that the suit was posted to 06.06.2017 for filing written statement of defendant Nos.1 and 2. But they could not file the written statement, since he was attending his father admitted in the hospital and he could not give instructions to his counsel. Thereafter, ex-parte decree was passed on 19.09.2017.

8. As indicated above, the defendants made their appearance on 31.03.2016 and till 06.06.2017 they failed to file written statement for more than one year and three months for the reasons best known to them. Even to accept the explanation offered by the 2nd defendant that on 06.06.2017 he was attending his father, who was sick and admitted in the hospital, no material is placed before the trial Court or before this Court. The trial Court has clearly observed that there is lack of diligence on the part of the petitioners in prosecuting the matter and the averments in the affidavit are not supported by any material either oral or documents.

9. In this context, I may refer to the principles laid down by the Hon'ble Supreme Court in **Esha Bhattacharjee Vs. Mg.Commit. of Raghunathpur Nafar Academy and others**¹ wherein the Apex Court while interpreting the provisions of Section 5 of the Limitation Act regarding condonation of delay, summarised the principles as follows:-

(i) There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

¹ 2013(12) SCC 649

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial

discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

10. The law consistently laid down by the Apex Court says that the word 'sufficient cause' must be construed liberally to meet the ends of justice without adopting pedantic approach. But, exception to this test to be applied is whether the petitioner made out a sufficient cause or not? Thus, the Court has to examine the circumstances and if the Court satisfied that the cause shown by the petitioner is beyond his control, such cause is to be accepted as sufficient cause, which prevented the petitioner from appearing before the Court on specified date. If the Court finds that the petitioner is negligent and deliberately protracting the proceedings for one reason or the other, such person is disentitled to claim the benefit of Section 5 of the Limitation Act. Even for applying the principles laid down by the Apex Court in **Esha Bhattacharjee Vs. Mg.Commit. of Raghunathpur Nafar Academy and others**, the petitioner failed to place any cogent material before this Court or before the trial Court giving satisfactory explanation for condoning the delay.

11. Therefore, on an overall consideration of material available on record, I am of the considered opinion that the petitioners designedly protracted the proceedings for a sufficient long period of time causing substantial delay in filing the written statement over a period of more than one year and three months, even after passing ex-parte decree the present application is filed under Section 5 of the Limitation Act to condone the delay of 105 days in filing the application under Order 9, Rule 13 of CPC to set aside the ex parte decree, which is not supported by any material on record. In such circumstances, the petitioners/defendant Nos.1 and 2 are not entitled to claim condonation of delay in filing the said application under Order 9, Rule 13 of CPC. I do not find any jurisdictional error or infirmity committed in the order impugned passed by the Court below i.e. learned Additional Junior Civil Judge at Jangoan and the said order is sustainable.

12. In the result, this CRP is dismissed confirming the orders dated 31.10.2019 in I.A.No.616 of 2017 in O.S.No.52 of 2016 on the file of the learned Additional Junior Civil Judge at Jangoan. In the circumstances of the case, the parties shall bear their respective costs.

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

//TRUE COPY//

Sd/-K.AMMAJI
ASSISTANT REGISTRAR


SECTION OFFICER

To

1. The Additional Junior Civil Judge, Jangaon, Jangaon District.
2. One CC to Sri Jalli Kanakaiah, Advocate (OPUC)
3. One CC to Sri Vivek Jain, Advocate (OPUC)
4. Two CD Copies
5. One Spare Copy

Kj.



HIGH COURT

DATED:13/04/2022



ORDER

CRP.No.138 of 2021

DISMISSING THE CRP WITHOUT COSTS.

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~~REMA~~
~~08/08/2022~~