

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

**FRIDAY, THE TWENTY SECOND DAY OF APRIL
TWO THOUSAND AND TWENTY TWO**

**PRESENT
THE HONOURABLE SRI JUSTICE P NAVEEN RAO**

CIVIL REVISION PETITION NO: 941 OF 2022

Petition under Article 227 of Constitution of India, aggrieved by the order dated 11/03/2022 in IA No.171 of 2021 in OS No.161 of 2016 on the file of the Court of the II Additional District Judge, at Warangal.

Between:

Bandi Mohan, Son of Chinna Kumarswamy

...PETITIONER/RESPONDENT/ PETITIONER/ DEFENDANT

AND

1. Kola Kumaraswamy, S/o Late Pedda Malliah
2. Nedurimelli Ramesh Rao, S/o Yethiraja Rao

...RESPONDENTS/ PETITIONERS/ RESPONDENT

IA NO: 1 OF 2022

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to grant an interim stay of Execution proceedings in O.S.No.161 of 2016 on the file of the II Additional District Judge at Warangal.

For the Petitioner : SRI ALLADI RAVINDAR, Advocate

For the Respondents :

The Court made the following: ORDER

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No. 941 of 2022

ORAL ORDER:

This revision is filed against the order dated 11.3.2022 in I.A No. 171 of 2021 in O.S. No. 161 of 2016 on the file of II Additional District Judge, Warangal dismissing the application filed under Section 5 of Limitation Act praying to condone the delay of 1324 days in presenting petition under Order IX Rule 13 CPC.

2. Revision petitioner is defendant and respondents herein are plaintiffs.

3. Respondents instituted O.S. No. 161 of 2016 on the file of II Additional District Judge, Warangal praying to grant decree of specific performance of agreement of sale. According to Court records, summons were served on the petitioner and petitioner did not enter appearance, therefore, he was set ex-parte and suit was decreed on 26.7.2017. Seeking enforcement of the decree granted to them, respondents filed EP No. 548 of 2018 and the same is pending. While so, petitioner herein filed I.A.No. 171 of 2021 praying to condone delay of 1324 days in presenting petition under Order IX Rule 13 CPC. On due consideration of the matter, the Court below found no merit in the grounds urged by the petitioner for condonation of delay and dismissed the Interlocutory Application. Hence, this revision.

4. Learned counsel for petitioner submits that Court erred in looking into the identification of the signature on its own and even though summons were not served on petitioner, Court treated as if summons were served on the petitioner and erroneously set the petitioner ex-parte and decreed the suit against him. As soon as petitioner came to know that such exparte decree was passed, steps were taken to file application for condonation of the delay. Learned counsel further submits that even though delay is large that cannot be the only criteria to reject application for condonation of delay and when substantive right on the property is involved, Court should take a lenient view and permit the defendant to contest the suit. That the Court could have compensated the respondents by awarding costs instead of dismissing the application for condonation of the delay. In support of his contentions, placed reliance on decision of the Supreme Court in **N.BALAKRISHNAN Vs M.KRISHNAMURTHY**¹.

5. To appreciate the contention of the learned counsel for petitioner, it is necessary to note the time line concerning the issue. After service of summons, the petitioner was required to enter appearance on 24.1.2017, but he did not appear-in-person before the Court nor appearance was entered on his behalf, therefore, he was set exparte on 24.1.2017 and exparte decree was passed on 26.7.2017. Seeking enforcement of the decree, respondents filed E.P. 548 of 2018, wherein notice was served on petitioner. Advocate entered

¹ (1998) 7 SCC 123

appearance on behalf of petitioner on 27.6.2018 and for the last more than three years petitioner is contesting the EP but is not bothered to take steps to seek restoration of the suit and to permit him to contest the same on merits.

6. Petitioner filed I.A. No. 171 of 2021 on 9.4.2021 i.e., after more than three years from the date setting him ex-parte. In support of the application filed to condone the delay, the only plea raised was that petitioner did not receive summons from the Court, therefore, entire exercise is erroneous. There is no explanation offered by petitioner on what steps he has taken after he received summon in E.P. 548 of 2018 and entered appearance and contesting the EP all along till application for condonation of delay was filed. Assuming that summons were not served on the petitioner in the suit, fact remains that he received summons in EP 548 of 2018 and entered his appearance on 27.6.2018. Therefore, it cannot be said that delay was on account of reasons beyond the control of petitioner and that he is diligent in prosecuting the litigation, warranting to take a lenient view.

7. When delay is long, burden is heavy on the person seeking condonation of delay to explain each day's delay with cogent reasons to the satisfaction of the Court. It cannot be seen in a routine manner, more so, when delay is large. In the instant case, delay in filing application to recall ex-parte decree is 1324 days.

8. It is no doubt true that quantum of delay is not material but genuineness or bonafides of the party in prosecuting the litigation is more important. It is also true that Rules of Limitation are not

meant to destroy the rights of the party but at the same time by his conduct petitioner allowed rights crystallized in respondents on account of ex parte decree granted to them. Therefore, greater injustice would be caused to respondents if his application was allowed by the trial Court.

9. For the aforesaid reasons, I do not see any error in the decision of the Court below warranting interference of this Court. The revision fails and accordingly the same is dismissed. No costs. Miscellaneous petitions, if any pending, are closed.

//TRUE COPY//

Sd/-T.SRINIVAS
ASSISTANT REGISTRAR


SECTION OFFICER

To

1. The II Additional District Judge, at Warangal.
2. One CC to Sri Alladi Ravindar, Advocate (OPUC)
3. Two CD Copies
4. One Spare Copy

Kj.



HIGH COURT

DATED:22/04/2022

ORDER

CRP.No.941 of 2022



CRP IS DISMISSED.

AKM (5)
30/6/2022