

HON'BLE Smt. JUSTICE P.SREE SUDHA

CIVIL REVISION PETITION No.1421 of 2020

O R D E R

1. Aggrieved by the order dated 04.12.2020 passed in I.A.No.1895 of 2019 in ASSR No.9285 of 2019 on the file of the learned XV Additional District Judge, Ranga Reddy District at Kukatpally, the petitioner herein preferred this revision petition.

2. The petitioner is the defendant and the respondents herein are the plaintiffs. The petitioner herein filed an application under Order 41 Rule 3 CPC before the trial Court seeking to condone the delay of 779 days in filing the appeal against the judgment and decree dated 13.10.2017 passed in O.S.No.491 of 2003 on the file of the learned I Additional Senior Civil Judge, Ranga Reddy District. The trial Court after considering the arguments of both the counsel at length, dismissed the application. Aggrieved by the same the petitioner herein preferred this revision.

3. Learned counsel for the petitioner would contend that the petitioner herein is the defendant in the suit filed by B.Arjun Reddy in O.S.No.491 of 2003 for specific performance. During the pendency of the proceedings in the suit B.Arjun Reddy died

and his legal representatives-wife and children were brought on record as Plaintiff Nos.2 to 6 in the suit and finally the suit was decreed in their favour. Learned counsel for the petitioner would also submit that the petitioner herein is not aware of the subsequent suit proceedings after it was dismissed for default on 13.04.2011. Her Advocate on record informed her that there is no chance of restoration without personal notice to her and gave bundle along with no objection. Then ultimately the suit is restored to its file on 07.01.2016. After restoration of the suit, a memo was filed by the counsel appearing for the petitioner herein on 18.02.2016 stating that the petitioner has taken away the bundle and also obtained no objection vakalat from him and as such he cannot represent the matter on her behalf. Learned counsel would also submit that it is for the trial Court to order notice but the plaintiff and his counsel played fraud on the trial Court by filing a memo dated 15.06.2017 stating that notice was served upon her counsel and managed the proceedings behind her back. He would also assert that as per Article 123 of the Limitation Act, 1963, limitation to file an appeal starts from the date of knowledge of the decree passed *ex parte* and as per the explanation specified therein the substituted service under Order 5 Rule 20 CPC shall not be deemed to be due service. As

the petitioner got knowledge of the dismissal of the *ex parte* suit only on 28.08.2019, there was no delay on her part. Even the agreement of sale dated 21.10.1997 there is a specific clause to the effect that the sale deed shall be executed within ten (10) months from the date of agreement in favour of the purchaser and time is essence of the contract and as such the suit is barred by limitation. He would also submit that in spite of said clause the balance sale consideration allegedly paid after three years on 15.05.2001 but the stamp papers were purchased on 27.01.1999. Plaintiff in the suit died on 11.10.2010 but the suit was dragged till 07.01.2016 and the trial Court ordered to serve the copy of the chief evidence affidavit of PW.2-GPA holder on 27.04.2017. Memo was filed on 15.06.2017 stating that the notice was served on the defendant's counsel and it is contrary to the docket order dated 18.02.2016. Learned counsel would also argue that the trial Court failed to consider the certified copy of the docket order dated 28.08.2019 passed in E.P.No.79 of 2017 and the extract of Article 123 of the Limitation Act, 1963 and its explanation which were filed along with the memo dated 09.11.2020 and the case law cited by him was also not considered by the trial Court. He would also argue that the trial Court failed to observe the patent fraud and forgery caused by

the respondent plaintiff in manipulating the agreement of sale and thus requested the Court to call for the records in I.A.No.1895 of 2019 in ASSR.No.9285 of 2019 and to set aside the said order.

4. The petitioner herein filed an application in I.A.No.1895 of 2019 in ASSR.No.9285 of 2019 on 05.09.2019 stated that she is defendant in O.S.No.491 of 2003 and filed her written statement. Subsequently, the suit was dismissed for default on 15.12.2008 and restored to file on 10.06.2010. Later the suit was dismissed for default on 13.04.2011 and again restored to its file on 07.01.2016 without any sufficient notice to her. When she came to know about the orders of the trial Court on 27.07.2019 and the respondents-plaintiffs came to take the possession of the suit schedule property as per the orders in E.P.No.7 of 2017, she obtained certified copies of the judgment and decree and filed the present appeal and she is not aware of the judgment and decree till 28.08.2019. It is her grievance that the trial Court restored the suit without notice to her and the plaintiffs obtained the judgment and decree by misrepresenting the Court and the general principle of law also mandate that the effected party should be heard. As she is unable to file the

appeal in time, she requested the Court to condone the delay of 779 days in filing the appeal.

5. Counter was filed by the respondents in detail on 04.11.2020 and contents of it will be discussed in due course of time to avoid repetition.

6. The trial Court after considering the arguments of both the learned counsel called for the records in the suit and also in the E.P. verified the same and dismissed the application.

7. The main contention of the petitioner herein is that she do not know the proceedings of the Court and her counsel gave no objection and that notice was not given to her at any point of time and that the plaintiff in the suit played fraud upon her and obtained the decree behind her back. Admittedly, it is for the petitioner herein to explain the delay of 779 days in filing the appeal. It is observed by the trial Court that E.P. 79 of 2017 was filed under Order 21 Rule 35 CPC on 14.12.2017 and it was closed after executing the registered sale deed in favour of the plaintiffs-D.Hrs. on 28.08.2019. The docket order of the E.P. proceedings clearly reflects that the presence of the petitioner-J.Dr. in the Court and it was also admitted by her in her representations. Even during the pendency of the suit

proceedings, she approached this Court by filing C.R.P.No.3526 of 2010. The Court executed the sale deed on 25.07.2019 through Court Bailiff. Perusal of the E.P. record shows that the sale deed sent to the Joint Registrar for registration was returned on the ground that the suit property is listed under the prohibited property for registration as per the notification issued by the District Collector, Ranga Reddy District. As such, the plaintiffs approached the Court by filing Writ Petition No.8861 of 2019 and it was allowed and then sale deed was registered in their favour. It was also observed that during the pendency of the E.P., notices were sent through registered post with acknowledgment due to the petitioner herein twice on 12.03.2018 and 06.01.2018 and when they were returned as unclaimed, publication was given on 15.09.2018. Thereafter, the defendant was set *ex parte* on 11.10.2018. C.R.P.No.816 of 2020 is filed by the petitioner questioning the closure of the E.P. proceedings but it was dismissed on 08.09.2020 with a direction to dispose of the application within eight weeks. Though the enquiry was completed within the stipulated time, plaintiffs filed I.A.No.1134 of 2020 to call for the entire suit and E.P. records and the records were received on 03.12.2020. The order was passed on 04.12.2020 after hearing both the counsel.

It was also observed that the petitioner herein is aware of the judgment and decree dated 13.10.2017 even by January 2018 initially and again by April 2018 but filed condone delay petition on 05.09.2019 and she has not explained the reasons for the delay between April 2018 to 05.09.2019 but simply contended that the delay is only 7 days as per Article 123 of the Limitation Act and finally stated that she could not explain the reasons for condoning the delay of 779 days and dismissed the application.

8. The petitioner herein also filed certain docket proceedings by pointing out certain errors of the Court. In a citation reported in **ESHA BHATTACHARJEE V/s. MANAGING COMMITTEE OF RAGHUNATHPUR NAFAR ACADEMY**¹, wherein the principles were laid down to condone the delay, which are 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.

¹ (2013) 12 SCC 649

- (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.
- (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 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 where the second calls for a liberal delineation.
- (ix) The conduct, behavior and attitude or 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.
- (xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.
- (xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.
- (xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality

of the adjudicatory system should be made as that is the ultimate institutional motto.

- (xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

9. The suit is filed by the plaintiff on 26.05.2003 seeking specific performance. The defendant made her appearance and filed written statement on 06.11.2006 and amended plaint is also filed on 07.01.2016. A memo was filed by the learned counsel for the defendant on 18.02.2016 stating to the effect that when the suit is dismissed for default, the defendant has taken the entire case bundle along with no objection vakalat and as such he cannot represent the case on her behalf and requested the Court to issue notice to the defendant. This clearly shows that the defendant is having the knowledge of the pendency of the suit from 2003 onwards till she has taken over the bundle wilfully from the counsel. When she knows pretty well about the pendency of the suit, it is for her to appear either in person or to engage the other counsel to represent the suit properly before the trial Court. Admittedly, the trial Court dismissed the suit for default on 15.12.2008 and restored it on 10.06.2010 and again dismissed it on 13.04.2011 and again

restored it on 07.01.2016 and thus more than sufficient opportunity was given to her. She has not explained anywhere as to why she kept quiet from 2016 onwards till the disposal of the suit on 13.10.2017 without making any appearance either in person or through counsel. Admittedly, the defendant has knowledge of the proceedings and she could not pursue the limitation with due diligence and she cannot blame the Court for not affording an opportunity to her. The trial Court also observed clearly that even during the pendency of the E.P. proceedings she approached this Court and thus she is having knowledge of the E.P. proceedings. Even Writ Petition No.8861 of 2019 filed by the plaintiffs in the suit, the defendant was arrayed as the fourth respondent. The trial Court also observed that she filed appeal on 05.09.2019 with a delay of 779 days stating that she came to know about the proceedings only on 27.07.2019, which is patently false and she attributed that the plaintiffs played fraud upon her and obtained proceedings behind her back, which is absolutely incorrect. The defendant also raised several issues regarding suit proceedings in O.S.No.491 of 2003 like the GPA was not signed and it was not proper and the sale consideration was not paid within ten (10) months, but she should have taken all those objections in the

trial Court by duly contesting the matter and adducing her evidence and she failed to do so for the reasons best known to her, and therefore, those points cannot be considered at this stage. The plaintiffs stated that already possession was delivered to him by the Court Bailiff and it was mutated in their names and they paid property tax and obtained water meter and electricity connection in pursuance of the same. It was also brought on record that after restoring the suit for the second time, the matter is posted for additional written statement on costs of Rs.200/- and the counsel for the defendant represented before the Court on 24.03.2013 but neither the defendant filed her additional written statement nor paid the costs. Instead, she filed I.A.No.1134 of 2020 to call for the records of the suit and the E.P. and it was allowed on 06.10.2020. The trial Court accordingly called for the records, verified the same and passed the order, and thus, it cannot be said that no reasonable opportunity was given to her. When the defendant raised an objection with regard to the fraud played upon her when she was set *ex parte* on 11.10.2018, notices were issued on 12.03.2018 and 06.01.2018 and when they were returned unclaimed, publication was given on 15.09.2018 and thus her argument that no notice was given to her during E.P.

proceedings is not tenable. She filed application to condone the delay on 05.09.2019 to which a counter was filed in October 2020 and she filed reply to the counter on 04.11.2020 and this Court perused all the documents.

10. The petitioner herein wilfully and voluntarily took away the bundle from the counsel and did not make her appearance during the pendency of the proceedings and kept quiet. Moreover, she was also watching the proceedings and notice was served upon her not only through Court but also by registered post with acknowledgment due and also by way of publication, but she avoided to receive the same in the E.P. She was arrayed as the fourth respondent in Writ Petition No.8861 of 2019 and she also preferred C.R.P.No.816 of 2020 during the pendency of the E.P. but simply now stating that she has no knowledge of the proceedings till she was dispossessed, and thus, it clearly amounts to abuse of process of law. Though suit was filed in the year 2003, plaintiff died during the pendency of the proceedings on 11.10.2010, his legal representatives were brought on record and the suit was finally decreed on 13.10.2017. Her counsel filed a memo on 18.02.2016 stating that she has taken away the bundle and it clearly shows that she could not represent at the fag end of the case from 2016 to

30.10.2017 and hence, the conduct of the petitioner herein is deprecated. The trial Court called for the records at her instance, verified the same and rightly dismissed the delay petition and it is not a case where the Court can invoke liberal approach and thus this Court find no reason to interfere with order under challenge.

11. The Civil Revision Petition is devoid of merit and it is accordingly dismissed.

12. Miscellaneous Petitions, if any, pending in this revision shall also dismissed in the light of this final order.

P.SREE SUDHA, J.

10th AUGUST, 2022.

PGS