

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

I.A.NO.1 OF 2022
IN/AND
APPEAL SUIT No.374 of 2007

BETWEEN

Sri B.Prem Kishore (died per LRs)
1. B.Vijay Laxmi, W/o.Late B.Prem Kishore
Aged 70 years, Occ. Housewife,
R/o.1-1-151/1, Road No.2,
Kothapet, Saroornagar Mandal
Ranga Reddy District & 4 others
... Petitioners/Proposed appellants

And

M/s.Hyderabad Industries Ltd.,
Rep. by its Chairman, having its H.O. at
HIL, Birla Building Road, Calcutta-700 001,
(formerly "Hyderabad Asbestos Ltd.") & another.
... Respondents

Date of Judgment Pronounced: **05.01.2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

1. Whether Reporters of Local newspapers may (Yes/No)
be allowed to see the Judgments?
2. Whether the copies of judgment may be (Yes/No)
marked to Law Reports/Journals?
3. Whether their Lordship/ Ladyship wish to (Yes/No)
see the fair copy of the Judgment?

Dr. JUSTICE CHILLAKUR SUMALATHA

*** THE HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA**

+ I.A.No.1 of 2022 In/And Appeal Suit No.374 of 2007

% Dated 05-01-2023

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... Respondents

! Counsel for Petitioners: Smt.B.Darshini

^ Counsel for respondents: Ms.Ambatipudi Vaishnavi

<GIST:

> HEAD NOTE:

? Cases referred

(2013) 12 Supreme Court Cases 649

HON'BLE Dr.JUSTICE CHILLAKUR SUMALATHA

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ORDER:-

1. This is an application filed under Section 5 of the Limitation Act seeking the Court to condone the delay of '1100' days in filing the petition to bring the Legal Representatives of the deceased-appellant on record.
2. Heard Smt.B.Darshini, learned counsel representing the petitioners as well as Ms.Ambatipudi Vaishnavi, learned counsel appearing for the respondents.
3. Making her submission, learned counsel for the petitioners states that the 1st petitioner is the wife and petitioner Nos.2 to 5 are the married daughters of the deceased-appellant and as they were not aware of the pendency of the appeal, they could not move an application within time to come on record as legal representatives of the deceased-appellant and therefore, the delay occurred may be condoned. Learned counsel for the petitioners

also states that indeed, there is no such delay and they have come on record within time.

4. Vehemently opposing the submission thus made, learned counsel for the respondents states that the appellant died on 07.07.2017 and the present application to condone the delay is moved on 24.11.2022 and therefore, there is about five years of delay in moving the application and thus, the delay is not '1100' days as submitted by the learned counsel for the petitioners and the delay is more than 1800 days. Learned counsel also states that the petitioners nowhere mentioned the date on which they came to know about the pendency of the appeal and the application is not moved indicating cogent and convincing reasons. Learned counsel for the respondents also submits that the reason for such delay is not explained in the petition and therefore, the petition is not maintainable.

5. Making her submission that the delay should not be condoned casually, learned counsel for the respondents relied upon the decision of the Hon'ble Apex Court which is rendered in the case between **ESHA BHATTACHARJEE Vs**

MANAGING COMMITTEE OF RAGHUNATHPUR NAFAR ACADEMY

AND OTHERS¹ wherein dealing at length with regard to the approach of the Courts in condoning the delay and how the expression “Sufficient cause” should be looked into, the Court at Paras 21 & 22 of the order held as follows:-

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (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.

21.2. (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.

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

21.4. (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.

¹ (2013) 12 Supreme Court Cases 649

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

21.6 (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.*

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

21.8 (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.*

21.9 (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.*

21.10. (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.

21.11. (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.

21.12. (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.

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

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

22.1. (a) 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.

22.2. (b) 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.

22.3. (c) 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.

22.4. (d) 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.”

6. The law of limitation is admittedly a substantive law. It prescribes particular period for a particular action to be brought before the Court. The legislative intent in bringing about the law of limitation is based on public policy. The object behind the law of limitation is that the remedy has to be sought within time and the party should be precluded from adopting delay or dilatory tactics so as to cause inconvenience to the other parties. Admittedly, there should be an end to the litigation.

7. When the application filed by the petitioners herein for condoning the delay is looked into, this Court finds absence of material particulars. The petitioners nowhere mentioned the date on which they came to know about the pendency of the appeal. Also, nothing is stated as to why there is wrong calculation of the days. As rightly projected

by the learned counsel for the respondents, the delay is not '1100' days as indicated in the application filed for condoning the delay. Learned counsel for the petitioners, during the course of her submission, has contended that the delay has to be condoned. Her submission reveals that it is right on part of the petitioners to get the delay condoned. The delay is not a day or two. The delay is inordinate i.e. for a period of about five years. Such delay should not be condoned by applying a liberal approach. The petitioners are bound to satisfy this Court that due to sufficient cause, they could not file an application within time for coming on record as the legal representatives of the deceased-appellant.

8. In the case on hand, such sufficient cause is neither projected nor shown. Therefore, this Court is not inclined to condone such an inordinate delay, that too, without there being any sufficient cause.

9. Resultantly, the petition is dismissed.

10. Consequently, the Appeal also stands dismissed.

11. Miscellaneous petitions, if any pending, shall stand closed.

Dr. JUSTICE CHILLAKUR SUMALATHA

Date:05.01.2023

Note:LR copy to be marked
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HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

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