

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

IA No.1 of 2022

In/And

Appeal Suit No.237 of 2022

COMMON JUDGMENT:

The petitioners/appellants/defendants have filed this application under Section 5 of Limitation Act to condone the delay of 220 days in filing the appeal assailing the judgment and decree dated 28.11.2019 in O.S.No.48 of 2013 on the file of the learned VII Additional District and Sessions Judge at Nirmal, Adilabad District.

2. The main averments of the affidavit filed in support of this application are that the petitioners are the appellants/defendants, they have received suit summons, filed written statement by engaging an advocate, thereafter due to some inconvenience, they could not contact their counsel and they do not know about the status of the Original Suit, there was communication gap, surprisingly, on 13.06.2022 the respondents/plaintiffs along with Court staff came to the suit schedule property and kept boundary stones and informed that the suit is decreed against them, then they have contacted their counsel, who informed them about the judgment and decree

dated 28.11.2019, they have been contesting the case throughout, since there was communication gap due to Covid-19 pandemic, they could not contact their counsel as such, the decree was passed without appreciating their contentions. Due to Covid pandemic and lockdown, being agriculturists, they could not move out as such there is a delay in filing the appeal suit accordingly, this application is filed on 15.09.2022 to condone the delay of 220 days.

3. This application is resisted by respondents/plaintiffs by filing a detailed counter alleging that this application is not maintainable, the trial Court has given ample opportunity to the petitioners for recording their evidence. Respondents have filed the Original Suit in respect of suit schedule land in Sy.No.297/A, admeasuring Ac.1.03 guntas and Sy.No.298 admeasuring Ac.3.32 guntas situated at Bhainsa Village and Mandal for declaration of title and recovery of possession. Having filed the written statement, inspite of granting ample opportunity, the petitioners failed to participate in the proceedings. Counsel for the defendants has reported that the defendants have taken back the case bundle with no objection. The Court has also issued notice to the defendant Nos.1, 3 and

4 but they remained absent. Accordingly, the trial Court has rightly decreed the suit. All false and baseless allegations are made stating that they have no knowledge of the proceedings, could not contact their counsel etc., and that they are not believable. The suit was decreed on 28.11.2019 much prior to Covid pandemic. The delay is not properly calculated, it is beyond 1000 days but without explaining as to how they have calculated the delay, it is simply mentioned as 220 days and the petition is not maintainable.

4. Heard learned counsel for the petitioners and respondents.

5. Learned counsel for the petitioners/defendants/appellants strenuously contends that the petitioners have a fair case on contest and that the Court below failed to give reasonable opportunity to the defendant Nos.1, 3 and 4 and that the suit against defendant Nos.2 and 5 is abated, when once the suit is abated against the other defendants, the trial Court ought not to have passed a decree, this by itself is sufficient to set aside the impugned judgment and decree dated 28.11.2019 and the decree is not legally sustainable as such, he

relied on the principles laid by the Apex Court in **Goli Vijayalakshmi and others Vs. Yendru Sathiraju (Dead) by Legal Representatives and others**¹.

6. Per contra learned counsel for the respondents/ plaintiffs would submit that nothing survives in this suit, in fact pursuant to the judgment and decree dated 28.11.2019 the respondents/plaintiffs have filed E.P.No.100 of 2021 for delivery of possession and the learned District Judge, after due enquiry, has ordered for delivery of possession, as per the report of the Bailiff dated 14.06.2022 and the panchanama dated 13.06.2022, in the presence of panch witnesses the Field Assistant has delivered possession of the suit schedule property in favour of the respondents/plaintiffs and accordingly, he has filed a copy of E.P.No.100 of 2021 with the report of Field Assistant dated 14.06.2022 along with copy of panchanama dated 13.06.2022.

7. Be it stated that on a plain reading of the averments in the supporting affidavit the petitioners/appellants have stated that they have received the suit summons, engaged an

¹ (2019) 11 SCC 352

advocate, written statement is also filed, but there was some communication gap between them and their counsel, suddenly and surprisingly on 13.06.2022 the respondents along with Field Assistant of the Court have come to the suit land, fixed the boundary stones, then they have come to know about the decree passed on 28.11.2019 and contacted their counsel as such, there is a delay of 220 days. Be it stated that as per their own affidavit, they have contacted their counsel on 13.06.2022 but this application is filed on 19.09.2022 with a delay of 220 days. Throughout the averments in supporting affidavit it is not explained as to how the petitioners/appellants have arrived at this delay of 220 days when the suit was decreed on 28.11.2019.

8. Learned counsel for the petitioners would submit that in view of Covid pandemic and also in view of the orders of the Hon'ble Supreme Court, the delay has to be excluded for the period from 15.03.2020 to May, 2021. Even if the request of the petitioners is considered, the delay is not properly explained for the simple reason that the trial Court in its judgment has categorically held that defendant Nos.1, 3 and 4 did not appear before the Court and their counsel represented no instructions

as such, notices were also issued to them but they remained absent. Several opportunities were given to these defendants for adducing their evidence but they failed to adduce any evidence on their behalf and accordingly, their evidence was treated as closed.

9. It is not the case for the defendant Nos.1, 3 and 4 that they were not given any opportunity. As per the judgment impugned when learned counsel for the defendant Nos.1, 3 and 4 has informed no instructions, the trial Court has issued notices to these defendants, still there was no response and the entire process took place in pre-Covid period, it is only after five months to the disposal of the Original Suit on 28.11.2019 and the Covid pandemic started somewhere in April, 2020. In that view of the matter, in view of the averments in the supporting affidavit, without any details, I do not find any merits in the delay explained. That apart, considering the factual matrix of the case, subsequent to the decree, respondents/plaintiffs have filed EP No.100 of 2021 and pursuant to the orders in Execution Petition on 13.06.2022 the Bailiff along with panch witnesses visited the suit land, conducted panchnama, delivered possession of the suit schedule property to the

respondents/plaintiffs. As per the report dated 14.06.2022 Field Assistant of the Court along with Surveyor and panch witnesses were present and appraised the Court orders to the petitioners/appellants, in their presence only the land was measured and as per the orders of the Court, the suit land was handed over to the decree holders/plaintiffs. To that effect, panchanama was conducted in the presence of panch witnesses.

10. Whereas learned counsel for the petitioners/appellants by relying upon **Goli Vijayalakshmi** (1st supra) submitted that the trial Court has committed illegality in decreeing the suit, when once the suit against defendant Nos.2 and 5 is abated and the defendants are claiming joint possession, the trial Court is not entitled to pass any decree. Perused the principles laid in the above decision. The facts of the case on hand are distinguishable from the facts in the above said decision. Here in the instant case, the suit against defendant Nos.2 and 5 was abated, no decree was passed and even written statement was only filed by defendant Nos.1, 3 and 4, the legal representatives of defendant Nos.2 and 5 were not brought on record, no relief is claimed against them, no decree

is passed, no such plea is taken in the written statement stating that in view of the death of defendant Nos.2 and 5, without bringing their legal heirs on to record, the suit is not maintainable. The question whether the Court can deal with such matters or not will depend on facts of each case. In the instant case, as stated above, no such decree was passed against dead persons neither they appeared before the Court nor any relief is granted against them, the suit was only decreed against defendant Nos.1, 3 and 4 and as per panchanama possession of the suit schedule property was also taken from them only as such, the principles laid in the above decision are not helpful to the petitioners/appellants to hold that the decree passed by the trial Court against defendant Nos.1, 3 and 4 is legally not sustainable. Even otherwise, this Court at this stage is not looking into the merits of the case as the petitioners/appellants/defendants have failed to explain the delay with cogent and satisfactory reasoning.

11. 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 others² 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

² 2013(12) SCC 649

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 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 is 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.

12. 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** (2nd supra), the petitioners have failed to place any cogent material before this Court or before the trial Court giving satisfactory explanation for condoning the delay. Further due to the inaction of the petitioners/defendants suit was decreed, possession is delivered in favour of the plaintiffs and a valuable right is accrued in their favour which cannot be easily disturbed at this belated stage.

13. Therefore, on overall consideration of the material available on record, it is noticed that the petitioners/appellants/defendants did not approach this Court or the trial Court within reasonable time and they were designedly trying to protract the proceedings for sufficient length of time causing substantial delay having filed the written statement, deliberately failed to prosecute the proceedings before the trial Court, still the trial Court on the information furnished by the learned counsel for the defendants that he has no instructions, issued notices to all the defendants but there was no response from their side, finally the trial Court has decreed the suit on 28.11.2019 considering the evidence adduced on behalf of plaintiffs. In such facts and circumstances of the case, I find no merit in the contentions raised by the petitioners/appellants that due to Covid pandemic they could not contact their counsel or that the delay is only 220 days and that the judgment and decree is not sustainable.

14. Thus, when the facts of the case on hand are tested on the touchstone of the principles laid in **Esha**

Bhattacharjee (2nd supra) the answer is in the negative, the petitioners are not entitled for condonation of such inordinate and unexplained delay and they failed to place any cogent material before this Court with satisfactory explanation for the delay from 28.11.2019 till the date of filing of the appeal suit excluding the period covered by Covid pandemic.

15. In the result, this interlocutory application is dismissed as devoid of merits and consequently, the appeal suit in A.S.No.237 of 2022 stands rejected.

In the circumstances of the case, there shall be no order as to the costs. As a sequel, miscellaneous applications if any pending, shall stands closed in this appeal suit.

A.VENKATESWHARA REDDY, J

Dated : 09-01-2023

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