

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

**WEDNESDAY, THE TWENTY SEVENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SMT JUSTICE K. SUJANA

CIVIL REVISION PETITION NO: 3671 OF 2018

Petition under Section 115 of CPC against the order dated 02.05.2018 made in I.A. No. 714 of 2018 in A.S.S.R.No. 3545 of 2018 on the file of the Court of the Chief Judge, City Civil Court, Hyderabad.

Between:

1. Sri Nalraj (Died) Per L.Rs,
2. Smt. Revati Gowlikar, W/o. Late Nalraj, Aged- 60 Years Occ- Household,
3. Smt. Megha Dandetikar, D/o. Late Nalraj W/o. Ravi Dandetikar, Aged- 37 Years,
4. Smt. Sheela, D/o. Late Nalraj W/o. S.L.Vishal, Aged- 32 years, Occ- Household,
5. Manmohan Raj Gowlikar, S/o. Late Nalraj, Aged- 30 Years, Occ- Business,

All the Appellants are R/o H.No- 16-9-585/ 1/A, Old Malakpet, Hyderabad - 36

...PETITIONERS/PETITIONERS/APPELLANTS

AND

1. G. Gopal Raj, S/o. Late G. Karan Raj Aged about 74 Years, Occ- Retd Govt Employee R/o. H.No- 16-9-585/1/A, Old Malakpet, Hyderabad - 36
2. Smt. Bhavana Nyamatabad, D/o. Late Nalraj W/o. Santhosh Kumar Nyamatabad, Aged- 34 years, Occ- Household R/o H.No- 16-9-585/1/A, Old Malakpet, Hyderabad - 36

(Notice to Respondent No.2 is not necessary as set exparte in the Lower Appellant Court)

...RESPONDENTS/RESPONDENTS/RESPONDENTS

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to

grant stay of all further operation/execution of the judgment and decree dated 13.11.2017 passed in OS No.2278 of 2005 on the file of the Additional Judge cum VI senior Civil Judge, CCC, Hyderabad against the petitioners herein pending disposal of the above CRP.

Counsel for the Petitioners : Sri D. Vayu Sen

Counsel for the Respondent No. 1: Sri R. Prakash

The Court made the following: ORDER

THE HON'BLE SMT JUSTICE K.SUJANA

CRP.NO.3671 OF 2018

ORDER:

Being aggrieved by the order dated 02-05-2018 in IA.No.714 of 2018 in A.S.Sr.No.3545 of 2018 on the file of the Chief Judge, City Civil Courts, Hyderabad, whereunder, the application filed by the petitioners under Section 5 of Limitation Act with a prayer to condone the delay of 25 days in presenting the application under Order XLI Rule 3(A) of Civil Procedure Code (for short 'C.P.C.') was dismissed. Hence, the present Civil Revision Petition.

2. The facts of the case are that petitioner No.2 is the mother of petitioners No.3 to 5. Respondent No.1 filed OS.No.2278 of 2005 on the file of the learned VI Senior Civil Judge, City Civil Court, Hyderabad to declare him as the owner of the petition schedule property and the same was dismissed on 13-11-2017 directing the respondents to vacate the premises within three months. Aggrieved by the said order, the petitioners have filed A.S.S.R.No.3545 of 2018 along with the application for condonation of delay of 25 days

in filing the appeal. By the impugned order, the trial Court dismissed the delay petition. Aggrieved by the said order, the present Civil Revision petition is filed.

3. Heard Sri D.Vayu Sen, learned counsel for the revision petitioners, and Sri Prakash, learned counsel for the respondents.

4. Learned counsel for the petitioners contended that the impugned order passed by the trial Court is not sustainable. He further contended that the trial Court ought to have considered the financial position of the petitioners, as petitioner No.2 is a household woman and a senior citizen, petitioner Nos.3 and 4 are married daughters living at their respective matrimonial houses and petitioner No.5 is a petty businessman, who is taking care of his mother and her necessities and a person with this financial background is very difficult to raise a loan, therefore, prayed the Court to allow the Civil Revision Petition.

5. On the other hand, learned counsel for the respondents submitted that the suit is filed in the year 2005 and the same was dismissed on 13-11-2017. Now, when the petitioners filed appeal with a delay of 25 days, it was dismissed in the year

2018 and belatedly filed the Civil Revision Petition. It is further submitted that the trial Court has rightly dismissed the delay petition as there is no explanation of day to day delay for condonation by the petitioners, as such, requested the Court to dismiss the Civil Revision Petition.

6. Having regard to the submissions made by both the parties and perusal of the material available on record, it appears that the suit was dismissed in the month of November, 2017 and the appeal is filed against the dismissal order with a delay of 25 days and also filed application under Section 5 of Limitation Act stating that due to financial constraints, delay of 25 days was occurred. While dealing with Section 5 of Limitation Act, the Court has to see whether any sufficient cause to condone the delay of application.

7. The Section 5 of Limitation Act reads as under :

"Section 5 In The Limitation Act, 1963:

5 Extension of prescribed period in certain cases. — Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Explanation.— The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or

computing the prescribed period may be sufficient cause within the meaning of this section"

A plain reading of the above makes it abundantly clear that if the revision petitioner satisfies the Court with sufficient cause for not filing the petition within the stipulated period, then the said petition can be allowed.

8. The Hon'ble Supreme Court in "*Collector Land Acquisition, Anantnag & Another Vs. Mst. Katiji & Others*¹", observed that :

'the Court should adopt a principle laid down under Section 5 of Limitation Act, no discrimination should be made merely because there is no day to day explanation for condoning the delay'.

9. In the present case, the delay of 25 days occurred by the petitioners due to the financial constraints, appeal was not filed in time, as such, the order of the trial Court is liable to be set aside by condoning the delay of 25 days.

10. Accordingly, the Civil Revision Petition is allowed. The order of the trial Court is hereby set aside by condoning the delay of 25 days and the first appellate Court is directed to dispose of the same after hearing both sides by numbering the appeal. Further, both the parties herein are directed to

¹ AIR 1987 SC 1353

cooperate with the Court for early disposal of the appeal as the suit is of the year 2005 and the appeal is of the year 2018. There shall be no order as to costs.

Consequently, Miscellaneous applications if any, are closed.

Sd/- A. SREENIVASA REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Chief Judge, City Civil Court, Hyderabad.
2. One CC to Sri D. Vayu Sen, Advocate [OPUC]
3. One CC to Sri R. Prakash, Advocate [OPUC]
4. Two CD Copies

VII/DL

kp.

HIGH COURT

DATED: 27/11/2024



ORDER

CRP.No.3671 of 2018

ALLOWING THE CRP

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6/1/25