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APHC010256982026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3330]
(Special Original Jurisdiction)

MONDAY, THE 26th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO

CIVIL REVISION PETITION No. 1460/2026

BETWEEN:

1. CHITTEPU LAXMI REDDY, S/o. NARAPA REDDY, AGED ABOUT 76 YEARS, R/o. D.No.1/176-2, GANDHI NAGAR, YERRAMUKKAPALLI, KADAPA CITY, YSR KADAPA DISTRICT.

...PETITIONER

AND

1. PATAN AYUB KHAN, S/o. PATAN ABDULLAH KHAN, AGED ABOUT 64 YEARS OCC: BUSINESS IN KUWAIT CITY AND RESIDING AT KUWAIT CITY.
2. PATAN NAZEERA BANU, W/o. PATAN AYUB KHAN, AGED ABOUT 50 YEARS. PREVIOUSLY RESIDING AT KUWAIT CITY AND NOW RESIDING AT D.No. 11/79, THOTAPALEM STREET, NANDALURU TOWN, YSR KADAPA DISTRICT.
3. PATAN PHYZULLAH KHAN, S/o. P. ABDULLAH KHAN, AGED ABOUT 59 YEARS R/o. SREERAM NAGAR, R.S. ROAD, KADAPA CITY, YSR KADAPA DISTRICT. (NOT NECESSARY PARTY TO THE C.R.P.)

...RESPONDENT(S):

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to begs to present his Memorandum of Civil Revision Petition aggrieved by the order dated 03.03.2026 in I.A.No.649 of 2024 in O.S.No.21 of 2020, on the file of the VI Additional District Judge - cum - Family Court at Kadapa,

Counsel for the Petitioner:

1. RAVULA NAGARJUNA

Counsel for the Respondent(S):

DHEERA KANISHKA

The Court made the following:

ORDER:

The present Civil Revision Petition is filed questioning the order dated 03.03.2026 in I.A. No. 649 of 2024 on the file VI Additional District Judge Kadapa, in condoning the delay of 729 days in filing the application to set aside the exparte decree dated 16.08.2022 in O.S. No. 21 of 2020.

2. For the sake of convenience, in this order, the parties will be referred to as petitioner/plaintiff and respondents/defendants. Respondents 1 and 2, who are Defendants 1 and 2 in the suit, who are contesting defendants. Hereafter refer as respondents/ defendants.

3. According to the plaint averments the civil revision petitioner/plaintiff filed suit O.S. No. 21 of 2020, on the file of VI Additional District Judge Kadapa, for specific performance against the respondents/defendants 1 and 2 respectively, who are husband and wife residing in Kuwait, basing on oral sale contract basing on the receipt of advance amount of Rs.5,00,000/- received and acknowledge by the 3rd defendant who is not owner of the property.

4. The said suit was decreed *exparte* on 16.08.2022. The petitioner/plaintiff filed E.P. 53 of 2023 under Order XXI Rule 34 of Code of Civil Procedure, to direct the 1st respondent/ 1st defendant (1st Judgment Debtor) to execute the regular sale deed, failing the

same, be done through due procedure of law. The said execution petition was allowed vide order dated 04.10.2023. Subsequently, the petitioner/plaintiff filed E.A. 42 of 2024 to direct the J.Dr/1st respondent herein to deliver vacant possession. The execution Court vide order dated 04.10.2024 issued warrant to the Court Amin to deliver the possession.

5. The respondents/defendants came to know the action of the petitioners/plaintiffs through their advocate and immediately requested further details. Based on the information furnished by their advocate, the present application is filed

6. The respondents/defendants filed I.A. No. 649 of 2024 in O.S. No. 21 of 2020 on the file of VI Additional District Judge Kadapa under Section 5 of the Limitation Act 1963 to condone the delay of 729 days i.e., 2 years 9 days in filing the application to set aside the *exparte* decree dated 16.08.2022. The reasons stated in the affidavit filed in support of the application and the rejoinder are that these respondents/defendants have filed suit O.S. No. 1193 of 2019 on the file of the Principal Junior Civil Judge Kadapa, for perpetual injunction and when the suit is pending, the petitioner/plaintiff filed suit O.S. No. 21 of 2020, fraudulently obtained an *exparte* decree knowing very well that the respondents/defendants are residing in Kuwait. The respondents/defendants came to know the action of the

petitioners/plaintiffs through their advocate and soon they requested to obtain information in this regard and based on the information the present application is filed and it is further stated that petitioner/plaintiff filed an I.A. 256 of 2020 under Order V Rule 20 of CPC to serve suit notice via substituted service through a paper publication in the Siasat Daily (International Edition, Kuwait). Although the learned court granted permission to publish the notice specifically in the Kuwait edition, the petitioner/plaintiff instead published it in the Hyderabad Edition (Telangana State) on 06.01.2021 and mislead the Court. Furthermore, it is sated that a procedure is contemplated or enshrined in the Code of Civil Procedure under Order V rule 25 and 26A of CPC effecting service of summons. According, to rule 26A of CPC summons intended to service in foreign countries shall be transmitted through the Ministry of External Affairs to the designated authority of foreign State whose endorsement of service constitutes conclusive proof of due service. In exercise of power under Section 29(c) CPC, the Central Government vide Gazette notification (G.S.R. 24(E) dated 12.01.2009 and the India has entered into a bilateral agreement on Judicial and Judicial Cooperation with State of Kuwait on 16.08.2005, ergo, the service of summons necessarily must be effected through the Ministry of External Affairs in accordance with statutory provisions. On the aforesaid grounds, it is prayed that the delay be condoned. Therefore

it is contended that the service of summons doesn't constitute valid service in law.

7. It is further stated that the respondent/defendant has gained the knowledge on 18.09.2024 and the application was filed on 24.09.2024 and the application to set aside the exparte has to be filed within 30 days under Or IX rule 13 CPC., and the present application is within the period of limitation according to law, hence prayed to condone the delay of 729 days in filing the application to set aside the *exparte* decree dated 16.08.2022. And it also stated that these respondents/defendants filed suit O.S. No. 13 of 2025, on the file of Principal District Judge Kadapa for declaration of title and consequential permanent objection for the very same subject property.

8. In opposition, the petitioner/plaintiff filed counter affidavit to the I.A. No. 649 of 2024 in O.S. No. 21 of 2020 denying all the averments made in support of the application *interlia* it is stated attributing fraud to the court amounts to contempt and the delivery of possession was taken by following due process of law in the suit and the petitioner/ plaintiff has examined the attestor who attested the receipt issued by the brother of the 1st respondent/defendant and the reasons assigned to condone the delay of 729 days are vague, untenable and illusory

and failed to explain each day delay in filing petition to set aside the *exparte* decree.

9. The learned trial Court agreed with the pleadings of the respondents/defendants (who were the petitioners in I.A. No. 649 of 2024) allowed the application and condoned the delay of 729 days in filing the application and set aside the ex-parte decree dated 16.08.2022. In doing so the trial Court has cited judgments of the Apex Court and this Court which are referred here under:

> (1) In the case of ***Collector Land Acquisition, Anantnag and another Vs May Katiji and others*** reported in AIR 1987 1353 wherein the Supreme Court held that "Everyday delay must be explained, does not mean that a pedantic approach should be made. Why not hour's delay, every seconds delay? The doctrine must be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
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> (2) In the case of ***Movva Anjamma and another Vs. Abhineni Anasuya and another*** reported in (1999) 1 ALD 398 the erstwhile High Court of Andhra Pradesh at Hyderabad held that in the following :
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> > Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The

idea is that every legal remedy must be kept alive for a legislatively fixed period of time. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.

(3) In the case of ***Esha Bhattacharjee v. Raghunathpur Nafar Academy*** reported in (2013) 12 SCC 649 the Apex Court held that:

(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) 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.

(4) In the case of ***Mool Chandra v. Union of India,*** (2025) 1 SCC 625, the Apex Court held that "if the cause for delay would fall within the four corners of "Sufficient cause" irrespective of the length of delay same deserves to be condoned.

10. Challenging the order dated 03.03.2026 in I.A. No. 649 of 2024 on the file VI Additional District Judge, Kadapa, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

11. The learned designate senior counsel Sri Vedula Venkata Ramana, assisted by the Sri Ravula Nagurjuna, for revision petitioner, emphatically argued that alleging fraud is easy, but it is difficult to prove and the respondents/defendants has nowhere averred that they are residing abroad, the trial Court has exceeded the jurisdiction and condoned the delay, the application that doesn't contain any valid reason much less a reason and liberal approach theory would cause prejudice to the petitioner/plaintiff and the discretion exercise by the trial court to condone the delay of 729 cannot be sustained and placed reliance of the judgment of the Apex Court in the case of ***Thirunagalingam v. Lingeswaran*** reported in 2025 SCC OnLine SC 1093, hence prayed to set aside the order impugned.

12. Per contra the learned designate senior counsel Sri O. Manoher Reddy, assisted by Sri Dheera Kanishka, for the respondents, vehemently argued reiterating the contents of the

affidavit and supported the trial court's order. It is argued that the petitioner/plaintiff has obtained the decree in fraudulent means and the findings of the trial Court order affirm the same and relied on the para graphs 25 to 28 of the judgment in ***Thirunagalingam v. Lingeswaran*** (referred supra) and further argued that the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse.

13. In the case of ***N. Balakrishnan v. M. Krishnamurthy*** reported in (1998) 7 SCC 123, held that rules of limitation are not meant to destroy the rights of parties. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter; acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or

perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower Court.

14. In the case of ***Thirunagalingam v. Lingeswaran*** reported in 2025 SCC OnLine SC 1093 that cited by the learned designate senior counsel for petitioner: The facts in that case are that a suit was decreed exparte and the defendant filed an application to set aside the exparte decree under Order IX rule 13 CPC along with a petition to condone the delay of 712 and 467 days in filing the application to set aside the exparte decree. The trial has allowed the application. The plaintiff preferred a Civil Revision Petition before the Hon'ble High court of Madras, which allowed the revision and dismissed the delay condonation petition. This matter was subsequently carried to the Supreme Court in SLP (C) Nos. 2054-55 of 2022. The Supreme Court dismissed the SLP on 25.02.2022, stating that the defendant's reasons were not satisfactory and did not demonstrate sufficient cause.

15. Subsequently, the defendant has filed a statutory appeal under Section 96 of the CPC against the same exparte decree, accompanied by an application under Section 5 and Section 14 of the

Limitation Act, 1963, presenting the same reasons as in the previous delay condonation application. The said application was dismissed by the lower appellate Court, however, the High Court has later allowed the application imposing costs of Rs.1,00,000/- payable to the Plaintiff in the suit. The plaintiff then filed an SLP before the Apex Court which granted the Special Leave Petition and set aside the Civil Revision Petition on the ground that the reasons offered in the first round of litigation were found **insufficient** and unsatisfactory, the same reasons could not be considered sufficient in the second round of litigation, accordingly, the order pertaining to the Civil Revision Petition was set aside.

16. The said facts in the judgment in **Thirunagalingam** (referred supra) are not applicable to the present facts of the case. The Apex Court succinctly held in most of the cases that delay in approaching the court has been conferred upon the courts to enable the court to do substantial justice to the parties by disposing the case on merits on the ground that the meritorious matter cannot be thrown out at very threshold by refusing to condone the delay, if doing so, the justice being defeated. And the said ruling is applicable in the present case.

17. In the present case on hand the agreement of the sale is oral agreement. Although oral agreement to sell is valid in the eye of law

under Section 10 of Contract Act, there is no consensus *ad idem* in between the petitioner/plaintiff and respondents/defendants, these respondents/defendants have not issued any receipt towards the sale agreement and no amount was received by these respondents/ defendants as per the plaint averments and no suit summons were served on these respondents/defendants and the publication in the newspaper is contrary to the own pleading of the petitioner/plaintiff in I.A. No. 256 of 2020 under Order V Rule 20 of CPC. The learned trial Court granted permission to publish the notice specifically in the Kuwait edition, the petitioner/plaintiff instead published it in the Hyderabad Edition (Telangana State). In other words, the summons that published in the newspapers (Siasat Daily International Edition, Kuwait)) were not duly served on respondents/defendants, rendered the summons as bad in law. The petitioner/plaintiff specifically averred in the plaint that the respondents/defendants 1 and 2 are residing in Kuwait. The respondents/defendants shown diligence in prosecuting the application and there is no negligence. Therefore the trial Court has rightly allowed the application.

18. The Civil Revision Petition is devoid of merit and accordingly it is dismissed. No order as to costs.

19. Any Observations made in this order are for deciding the present petition and any expression of opinion on merits is not binding on the trial Court.

As a sequel, interlocutory applications, if any pending in this Civil Miscellaneous Appeal shall stand closed.

JUSTICE TARLADA RAJASEKHAR RAO

Date: 26.10.2026

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THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

C.R.P.No. 1460 OF 2026

Date: 26-10-2026

Harin