



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3494]

TUESDAY, THE TWENTY FOURTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

THE HONOURABLE SMT JUSTICE SUMATHI JAGADAM

I.A.No.1/2020

in/and

FIRST APPEAL NO: 74/2020

Between:

M/s Mani Venkata Constructions and Others

...APPELLANT(S)

AND

Chakka Rama Krishna and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1. R SIVA SAI SWARUP

Counsel for the Respondent(S):

1. M V S ANIL KUMAR R

This Court made the following:

JUDGMENT: *(Per Hon'ble Smt. Justice Sumathi Jagadam)*

Aggrieved by the judgment and decree dated 13.02.2017 passed by the learned Principal District Judge, Visakhapatnam, in O.S.No.267 of 2009, defendant Nos.1 to 3 in the said suit preferred the present appeal. Along with the appeal, they also filed I.A.No.1 of 2020 under Section 5 of the Limitation Act, 1963, to condone the delay of 880 days in filing the appeal.

2. The 1st respondent herein/plaintiff filed the suit against the appellants and the 2nd respondent herein/defendants for recovery of Rs.16,13,833/- with interest @ 24% p.a. and for costs of the suit.

3. On 13.02.2017, the suit was partly decreed in favour of the plaintiff with proportionate costs and directions that the defendants 1 to 4 shall jointly and severally pay the plaintiff a sum of Rs.11,50,000/- with subsequent interest @ 18% p.a. from the date of Ex.A.1, i.e., 09.01.2008 till the date of filing of the suit, i.e., 05.10.2009 and thereafter @ 12% p.a. on the principal amount of Rs.11,50,000/- from the date of filing of the suit, till the date of realisation of the entire amount.

4. Briefly, the case of the appellants is that the 1st appellant is running a firm in the name and style "M/s. Mani Venkata Constructions".

Appellants Nos.2 and 3 are the Managing Partner and Partner of the firm respectively. The 2nd appellant suffered from jaundice for six months. After the suit was decreed, the 1st respondent came forward for settlement, the matter was placed before elders, however, the 1st respondent did not come forward thereafter, as such, the appellants informed their counsel to take steps to challenge the judgment and decree.

5. The counsel for the petitioners *inter alia* submits that initially the case bundle got mixed with other bundles, and the same was not traced. After the bundle was traced out, a Civil Revision Petition was filed before this Court in 2019. Subsequently, based on the orders passed by this Court in the C.R.P., the instant appeal was filed along with I.A.No.1 of 2024 for condonation of the delay and he submits that the petitioners have strong grounds to succeed in the appeal and therefore, their right of appeal may not be stifled on technical grounds.

i) In support of his submission, learned counsel for the petitioners/appellants placed reliance on the judgment of the Hon'ble Supreme Court in ***Noted Infotech P.Ltd. Vs. Securities & Exchange Board of India*** (Civil Appeal No.4649 of 2006) wherein an application to condone the delay was allowed by directing the appellant therein to deposit a sum of Rs.1,25,000/- as costs to the respondent.

6. *Per contra*, the counsel for the 1st respondent submits that the suit was decreed on 13.02.2017, and the appeal was filed with a delay of 880 days. The appellants have wrongly calculated the delay. The first respondent never agreed to settle the matter after passing of the decree. The second appellant has not filed any document before this Court to prove his illness. The appellants filed the first appeal only to avoid the execution proceedings, pending before the Court of the Principal District Judge, Visakhapatnam.

7. Learned counsel placed reliance on the judgment in ***Majji Sannemma alias Sanyasi Rao Vs. Reddy Sridevi and others***, reported in 2021 SCC OnLine SC 1260, and contend that when the appellants fail to offer a satisfactory explanation for the delay, the Court shall not come to their rescue. He, thus, prayed to dismiss the petition.

i) In support of his submissions, learned counsel for the 1st respondent further relied on the judgments of the Apex Court in the cases of ***State of Madhya Pradesh Vs. Ramkumar Choudhary*** (SLP (C) Diary No.48636 of 2024 dated 29.11.2024) and ***D.Gopinathan Pillai Vs. State of Kerala***¹ as well as the judgment of this Court in ***Poleboina Ramachandraiah @ Rambabu Vs. Sunku Rama***

¹ 2007 (1) Supreme 510

Lakshumma (I.A.No.1 of 2022 in/and S.A.No.42 of 2022 dated 23.12.2022).

ii) In **Ramkumar Choudhary case** (referred supra), the Apex Court observed thus:

“7. There is one another aspect of the matter which we must not ignore or overlook. Over a period of time, we have noticed that whenever there is a plea for condonation of delay be it at the instance of a private litigant or State the delay is sought to be explained right from the time, the limitation starts and if there is a delay of say 2 years or 3 years or 4 years till the end of the same. For example if the period of limitation is 90 days then the party seeking condonation has to explain why it was unable to institute the proceedings within that period of limitation. What events occurred after the 91st day till the last is of no consequence. The court is required to consider what came in the way of the party that it was unable to file it between the 1st day and the 90th day. It is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows the limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before the limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. (See: Ajit Singh Thakur Singh and Another v. State of Gujarat, AIR 1981 SC 733).”

iii) In **Gopinathan Pillai case** (1 supra), the Apex Court held as under:

“5. We are unable to countenance the finding rendered by the Sub Judge and also the view taken by the High Court. There is no dispute in regard to the delay of 3320 days in filing the petition for setting aside the award. When a mandatory provision is not complied with and when the delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay, only on the sympathetic ground. The orders passed by the learned Sub Judge and also by the High Court are far from satisfactory. No reason whatsoever has been given to condone the inordinate delay of 3320 days. It is well considered principle of law that the delay cannot be condoned without assigning any reasonable, satisfactory, sufficient and proper reason. Both the courts have miserably failed to comply and follow the principle laid down by this Court in catena of cases. We, therefore, have no other option except to set aside the order passed by the Sub Judge and as affirmed by the High Court. We accordingly set aside both the orders and allow this appeal.”

iv) In ***Poleboina Ramachandraiah case*** (referred supra), a Learned Single Judge of this Court referred the judgment of the Hon'ble Supreme Court in ***Balwant Singh (dead) Vs. Jagdish Singh and Others***, reported in (2010) 8 SCC 685, wherein at paragraphs 24 and 25 it is held as follows:

“We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of “reasonableness” as it is understood in its general connotation.

The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of

a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

8. As seen from the affidavit, the appellants have not given a satisfactory explanation for condoning the delay of 880 days in filing the appeal. Neither the details of the C.R.P. stated to have been filed nor a copy of the order granting liberty to file appeal was placed for perusal of this Court. It appears as though the petitioners/appellants were not diligent in pursuing their remedies. Negligence is one factor which comes in the way of the Courts exercising discretion, and the petitioners in the present case, who are not only negligent but also not vigilant, cannot expect the Court to come to their rescue. Though the counsel for the petitioners/appellants sought to impress upon that they have substantial grounds to succeed in the appeal and, therefore, their right of appeal may not be stifled on technical grounds of delay in filing the appeal, we are afraid, the strength or weakness of the appellants in the appeal itself cannot be a ground to condone the delay, when the appellants failed to show their diligence in filing the appeal on time. The

strength of arguable grounds in the appeal may be considered as an additional factor that is not the case here. As the petitioners/appellants failed to explain the delay satisfactorily, much less with plausible reasons, this Court has no option, except to reject the application to condone the delay.

8. For the above reasons, I.A.No.1 of 2020 is dismissed. Consequently, the First Appeal is also dismissed. No costs.

NINALA JAYASURYA, J

SUMATHI JAGADAM, J

24th December, 2024
cbs

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA
THE HONOURABLE SMT. JUSTICE SUMATHI JAGADAM

I.A.No.1 of 2020 in A.S.No.74 of 2020

24th December, 2024

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