
(2022) 11 TEL CK 0117

High Court For The State Of Telangana:: At Hyderabad

Case No: Civil Revision Petition No. 1376 Of 2022

Naini Sanjeeva Reddy

APPELLANT

Vs

Kandala Baldev Reddy

RESPONDENT

Date of Decision: Nov. 21, 2022

Acts Referred:

- Code Of Civil Procedure, 1908 - Order 9 Rule 13
- General Clauses Act, 1897 - Section 27

Hon'ble Judges: P.Madhavi Devi, J

Bench: Single Bench

Advocate: K Venumadhav, Gaddam Kiran Kumar

Final Decision: Allowed

Judgement

1. This Civil Revision Petition is filed by the petitioner against the order of the Hon'ble Senior Civil Judge at Mahabubabad dated 07.06.2022 in

I.A.No.347 of 2018 in O.S.No.71 of 2015 in refusing to condone the delay of 591 days caused in filing a petition to set aside the ex-parte decree

passed on 21.03.2017 in the Suit in O.S.No.71 of 2015.

2. Brief facts leading to the filing of the present Civil Revision Petition are that the respondents have filed a Suit in O.S.No.71 of 2015 before the

Court of the Hon'ble Senior Civil Judge, Mahabubabad against the petitioner herein as defendant for declaration of title and permanent injunction.

The defendant in the Suit was set ex-parte and the Suit was decreed in favour of the plaintiffs vide order dated 21.03.2017. The petitioner herein has

filed I.A.No.347 of 2018 seeking condonation of delay of 591 days in filing of an application to set aside the ex-parte decree dated 21.03.2017. The

said application was dismissed by holding that the petitioner is silent with respect to the reason for day to day delay of 591 days or atleast the reason

for delay of 591 days caused for filing the set aside petition. With these observations, the I.A. was dismissed. Challenging the same, the present Civil

Revision Petition is filed.

3. Learned counsel for the petitioner submits that in the affidavit accompanying the application for condonation of delay of 591 days, the petitioner has

clearly explained that he was not aware of the ex-parte decree against him which was passed on the 21.03.2017 as he has not received any notices or

summons in the Suit from the Hon'ble Court. It was submitted that on verification of the record, it was found that the summons were sent only

thorough Registered Post but it was returned with the endorsed as 'unclaimed'. It was submitted that the petitioner has never unclaimed the

registered post at any point of time and even the concerned postman, without coming for further approach, has deliberately endorsed it as unclaimed,

without the consent, knowledge of the petitioner and his family members. The petitioner submits that when he has approached the office of the

Tahsildar, for getting digital pattadar passbooks in respect of suit schedule lands, he was informed about the ex-parte decree and on coming to know

the same, the petitioner has filed I.A.No.347 of 2018 for condonation of delay in filing the petition under the Order 9 Rule 13 of Civil Procedure Code

and a petition for setting aside the ex-parte decree dated 21.03.2017. He submitted that though the petitioner has given the reasons for the non-

appearance of the petitioner before the Court which has resulted in ex-parte decree and also the reasons for delay in filing of the petition for setting

aside the ex-parte decree, the Civil Court has dismissed the same by holding the petitioner has not given any reasonable cause. He submits that the

issue involved in the suit is with regard to the immovable property owned by him and therefore, if the delay is not condoned and the ex-parte decree is

not set aside, he will suffer irreparable loss and great hardship and therefore prayed for setting aside the order passed in I.A.No.347 of 2018 in

O.S.No.71 of 2015 and consequently to direct to the lower Court to consider the petition filed for setting aside the ex-parte decree. He placed reliance

upon the following decisions in support of his prayer for condonation of delay.

1. G.Govindappa v. P.R.Ramakrishna Rao and others reported 547, in 2016 LawSuit(Hyd)

2. Gulnar Gulabi v. Tasneem Sulthana reported in 2016 LawSuit(Hyd) 507

4. Learned counsel representing respondents relied upon the counter affidavit filed by the respondent No.2. It is submitted that the petitioner has filed

I.A.No.347 of 2018 only to drag on the matter and that the petitioner has not given any reasonable cause for the delay in filing an application for

setting aside the ex-parte decree. It is submitted that the address given in the suit as well as the address given in the present Civil Revision Petition are

one and the same and therefore it cannot be said that the petitioner has not been served with the notices which have been sent by Registered Post

Acknowledgment due. It is submitted that the petitioner had deliberately not received the notices, and therefore the postman has given endorsement

that it was unclaimed. It is further submitted that the petitioner has participated in various other proceedings i.e., in W.P.No.17634 of 2020 and CRP

No.1370 of 2021 and therefore, he cannot state that he was not aware of the ex-parte decree passed by the lower Court. Therefore, he prayed for the

dismissal of the Civil Revision Petition. He also placed reliance of the judgment of the Hon'ble Supreme Court in 547, the case of Esha

Bhattacharjee v. Management Committee of Raghunathpur Nafar Academy and others reported in (2013) 12 SCC 649 in support of his contentions.

5. Having regard to the rival contentions and material on record, this Court finds that the only issue in this Civil Revision Petition is whether the

petitioner has given reasonable cause for condonation of delay of 591 days. Though it has been held in a number of cases from time to time that the

petitioner has to explain the day to day delay with reasonable cause, it has also been held that the Court should not take pedantic approach in

condonation of delay where the substantive rights of a party or a property are involved in a Suit. The Hon'ble Supreme Court in the case of Esha

Bhattacharjee (cited supra) has considered the case law on the issue and has culled out the principles as applicable to an application for condonation

of delay 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 act-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 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.

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.

(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.

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

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.

(xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving

(xvii) 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.â€

6. As seen from the above principles, the Hon'ble Supreme Court has held that as substantial justice, being paramount and pivotal, the technical

considerations should not be given undue and uncalled for emphasis and that no presumption can be attached to deliberate causation of delay.

However, it was also observed that gross negligence on the part of the counsel or litigant is to be taken note of. The Hon'ble Supreme Court has

further held that 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.

7. In the case before this Court, the only ground given by the lower court for dismissing the condone delay application is that the petitioner has not

given the date on which he has approached the Tahsildar for issuance of e-pattadar passbooks and as to when he has come to know about the ex-

parte decree. It is however not disputed that e-pattadar passbook were to be issued. Therefore, the contention of the petitioner that he has approached

the Tahsildar for issuance of such pattadar passbook cannot be doubted. In view of the same, the reason given by the petitioner cannot be said to be

fanciful or concocted. Further, the notices in the suit were admittedly sent only by RPAD and the same have been returned with the endorsement as

unclaimed. Section 27 of the General Clauses Act, 1897 provides that a document is presumed/deemed to be sent/served if it is properly

addressed, prepaid and posted by Registered post, unless the contrary is proved.

However, in this case, the notice was returned as unclaimed.

Therefore, it is a rebuttable presumption that the notice has been served on the defendant/petitioner. Further, it is noticed that the Suit is for declaration

of title and permanent injunction, substantive rights of the parties over the suit schedule property are involved. The judgments relied upon by the

learned counsel for the petitioner also support this proposition. Therefore, this Court is inclined to accept the reasons given by the petitioner as

reasonable cause for non-appearance before the Court in the Suit and the delay in filing the application to set aside the ex-parte decree against the

petitioner and condone the delay of 591 days and direct the Civil Court to consider the application of the petitioner for setting aside the ex-parte decree

dated 21.03.2017.

8. Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.