

---

**(2001) 07 AP CK 0008**

**Andhra Pradesh High Court**

**Case No:** C.R.P. No. 3045 of 1999

Collector and Others

APPELLANT

Vs

T. Shivalingam

RESPONDENT

---

**Date of Decision:** July 24, 2001

**Acts Referred:**

- Limitation Act, 1963 - Section 5

**Citation:** (2001) 6 ALT 616

**Hon'ble Judges:** B. Prakash Rao, J

**Bench:** Single Bench

**Advocate:** Govt. Pleader for Arbitration, for the Appellant; R. Chandra Sekhar Reddy, for the Respondent

**Final Decision:** Dismissed

---

### **Judgement**

@JUDGMENTTAG-ORDER

B. Prakash Rao, J.

The defendants are the petitioners herein who are aggrieved against the orders in LA. No. 834 of 1999 in O.S. No. 336 of 1996 dated 14-7-1999 on the file of the I Junior Civil Judge, City Civil Court, Secunderabad dismissing the application filed u/s 5 of the Limitation Act seeking condonation of delay of 414 days in filing the application to set aside an ex parte decree passed in the suit.

2. The respondent herein has filed the suit against the petitioners herein seeking damages for the illegal demolition of their house and also preventing reconstruction of the same. Subsequent to the service of summons, the petitioners appeared through the Assistant Government Pleader on 6-11-1996. However, no written statement was filed in spite of ordering costs, which also were not paid. Hence the petitioners were set ex parte on 3-12-1997. It is pointed out that a representation was made by the Assistant Government Pleader that he is not in the habit of paying costs from his pocket. Therefore, the Court sought to proceed to set the petitioners

ex pane. Later, the respondent-decreeholder has filed execution petition in E.P. No. 177 of 1998, the notice of which was duly served on the petitioners on 6-12-1998. Now an application is filed seeking to set aside the ex pane decree along with the present application seeking condonation of delay on 19-2-1999. The only reason shown in the affidavit filed in support of the application is that they were not aware of the proceedings.

3. On contest, the Court below refused to accede to the reason as shown by the petitioners. Hence dismissed the application.

4. Heard both sides.

5. On a consideration of the submissions made on either side and also on a perusal of the record, it is evident that the petitioners did receive notice and appeared through the Assistant Government Pleader. Even though costs were imposed after having granted several adjournments, no written statement has been filed and even the costs were also not paid. The fact that the Assistant Government Pleader refused to pay the costs on the ground that he is not in the habit of paying from his pocket is also not denied. Even thereafter, there was no immediate action on the part of the petitioners herein to seek the setting aside of the decree. It is only after receiving the notice in the execution petition and that too, after a lapse of three months, the present application is filed. Except mentioning about these events which have occurred in the Court, no reason is given as to why the petitioners could not contest the matter in the suit nor as to why the written statement could not be filed and also as to why they could not appear on the date when the matter was posted for filing of the written statement on payment of costs or even thereafter.

6. In the circumstances I do not find any merits in the revision and it is accordingly dismissed. No costs.