

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE: NELLORE**

Present: **G.SRINIVAS**
Principal District Judge
NELLORE

Wednesday, the 11th day of February 2026

CIVIL MISCELLANEOUS APPEAL No.9/2025

Vinnakota Subhashini .. Appellant

Vs.

Bellamkonda Muralikrishna .. Respondent

On appeal against the order and decretal order dated 7.5.2025 of the Junior Civil Judge, Atmakur, in—

I.A.No.35/2024
O.S.No.66/2020

Vinnakota Subhashini .. Petitioner/Defendant

Vs.

Bellamkonda Muralikrishna .. Respondent/Plaintiff

This Civil Miscellaneous Appeal coming on 9.2.2026 for hearing before me, in the presence of Sri V.Upendra Rao – Advocate for the appellant and of Sri Piduru Nageswara Rao – Advocate for the respondent, and upon hearing, having stood over for consideration to this day, this Court made the following—

ORDER

The Civil Miscellaneous Appeal is filed challenging the order and decretal order dated 7.5.2025 in I.A.No.35/2024 in O.S.No.66/2020 on the file of the Junior Civil Judge, Atmakur (hereinafter referred to as ‘the trial Court’), whereby and whereunder the petition filed by the appellant herein to condone

the delay of 445 days in filing the petition set aside the ex parte decree dated 16.12.2022 passed in the suit, was dismissed.

2. The circumstances that led to the present Civil Miscellaneous Appeal in brief are:

2.1 The respondent filed the suit in O.s.No.66/2020 before the trial Court for specific performance of an agreement of sale dated 7.9.2019 said to have been executed by the appellant in his favour in respect of the suit schedule property, wherein the appellant was set ex parte on 5.3.2021, and subsequently, an ex-parte decree was passed on 16.12.2022 in favour of the respondent, and in pursuance thereof the respondent filed execution petition in E.P.No.2/2024.

2.2 Upon receiving notice in the said Execution Petition, the appellant filed a petition to set aside the ex-parte decree dated 16.12.2022, along with a petition under Section 5 of the Limitation Act in I.A.No.35/2024, to condone the delay of 445 days in filing the same, contending that she never executed the alleged agreement of sale, and that she did not receive any notice in the suit though it was filed on 14.10.2020, and that she came to know about the ex-parte decree passed in the suit against her only on her enquiry after receiving notice in E.P.No.2/2024. Contending further that passing of ex-parte decree against her without notice is unjust and in violation of the principles of natural justice, and that she has good case on merits, she prayed to condone the delay of 445 days stating that, since she did not receive any summon or notice, there was no willful negligence on her part to appear in the suit, she prays to condone the delay and to receive the petition to set aside the ex-parte decree.

2.3 The respondent filed a detailed counter before the trial Court, denying the version of the appellant, contending that the appellant is well aware of the suit proceedings before the trial Court and she also received the demand draft bearing No.134192 dated 9.2.2023 towards balance sale consideration of

₹.1,00,000/- under the agreement of sale, and encashed the same on 16.2.2023, and that as per the order in the suit dated 4.2.2021 the appellant was called absent on 4.2.2021 and there was no representation on her behalf, and she was directed to appear and file written statement on 5.3.2021, but on that day, as she was called absent and there was no representation on her behalf, she was set ex parte, and the matter was posted for plaintiff's evidence to 25.3.2021. According to the respondent, the appellant set up a false plea for the purpose of this application only. Rest of the contentions raised in the counter are out of the scope for consideration in a petition filed under Section 5 of Limitation Act, as such, they are not reiterated.

2.4 No oral or documentary evidence was adduced before the trial Court by either of the parties, and upon hearing the parties and considering the written arguments filed on behalf of the respondent, the trial Court dismissed the petition in I.A.No.34/2025 by its impugned order dated 7.5.2025.

3. Aggrieved by the same, the appellant preferred the present Civil Miscellaneous Appeal on the following grounds—

(i) The order of the trial court is unjust, erroneous and illegal, as it failed to appreciate the contentions of the appellant in her affidavit and arguments, and passed the impugned order drawing certain presumptions and assumptions on the docket orders dated 4.12.2020, 4.2.2021 and 5.3.2021, without following the principles of natural justice.

(ii) The trial Court ought to have seen that since March 2020 there was COVID 19 pandemic and functioning of the Courts was restricted during the said period, and as such the contention of the appellant in regard to the delay is bona-fide, but it was not properly appreciated by the trial Court.

(iii) The trial Court ought to have seen that the respondent is a practicing Advocate, and the appellant is a close relative of the respondent, as such there is a chance of misrepresentation of facts before the trial Court.

(iv) Hence, it is prayed to set aside the impugned order of the trial Court, and to give an opportunity to the appellant to contest the suit on merits.

4. Heard both sides and perused the material available on record.

5. Now the point that arises for consideration in this Civil Miscellaneous Appeal is—***Whether the Civil Miscellaneous Appeal is maintainable, and if so, whether there are any justifiable grounds to set aside the impugned order?***

6. **POINT:** - On the perusal of the record, the present Civil Miscellaneous Appeal carried on I.A.No.35 of 2024 in O.S.No.66/2020 under Section 5 of the Limitation Act to condone the delay of 445 days on the file of the Junior Civil Judge's Court, Atmakur. Aggrieved by the orders of the said Court the petitioner therein carried the appeal. In the trial Court, the appellant herein filed a petition.

(i) On further perusal of the record the respondent herein, who is the plaintiff filed a suit before Junior Civil Judge, Atmakur under O.S.No.66 of 2020 seeking specific performance of contract, based upon a sale agreement dated 07.09.2019, said to have been executed by the appellant herein against the respondent herein wherein the appellant herein was set ex parte on 05.03.2021 and subsequently an ex parte decree was passed against the appellant herein on 16.12.2022 in favour of the respondent/plaintiff and thereby basing upon the said decree an execution petition was also filed against the appellant/ defendant under E.P.No.2 of 2024. Upon receipt of notice in the Execution Petition, the appellant filed a petition to set aside the ex-parte decree dated 16.12.2022 along with a petition under Section 5 of the Limitation Act in I.A.No.35 of 2024

to condone the delay of 445 days in filing the petition to set aside the ex-parte decree. In the said petition, it is contented by the appellant that she never executed the agreement of sale in favour of the respondent herein and did not receive any notice or summons from the respondent herein and as such sought for the cancellation of the ex-parte decree.

(ii) It is also appearing from the record that the trial Court has dismissed the petition for condonation of delay under Section 5 of the Limitation Act under I.A.No.35 of 2024 and consequently the petition under Order IX Rule 13 C.P.C. was also dismissed by the trial Court.

7. Per contra, the respondent contended that the appellant herein is well aware about the suit proceedings before the trial Court and the appellant herein also received the demand draft dated 09.02.2023 towards balance of the sale consideration of amount of ₹.1,00,000/- under the agreement of sale and encashed the same on 16.02.2023 as per the directions of the trial Court in O.S.No.66 of 2020, as such the appellant got knowledge as to the above suit and moreover the appeal is not maintainable before this Court, as the appeal is carried under Section 5 of the Indian Limitation Act, which is not an appealable order under Order XLIII of C.P.C., and as such, the appeal is liable to be dismissed.

8. Per contra the learned counsel for the appellant has submitted that the appeal under Civil Miscellaneous Appeal is maintainable against the orders under Section 5 of the Indian Limitation Act. In support of his contentions, he submitted a dictum between “**Koushik Mutually Aided Cooperative Housing Society and Another Vs. Ameena Begum and Another**”,¹ which is passed by the Hon'ble Apex Court, Division Bench.

¹ 2023 15 SCR 841 in Civil Appeal No.7903 of 2023 Dated 1.12.2023

(i) As per the said observation it is appearing that the aggrieved party therein carried the appeal on Section 5 of the Limitation Act along with a petition under Order IX Rule 13 of C.P.C. As the Order IX Rule 13 of C.P.C. is appealable order under Order XLIII of C.P.C. simultaneously, the petition under Section 5 of the Limitation Act was also numbered as appeal by the trial Court. In which event, an order was passed by the Hon'ble Apex Court that the appeal is maintainable against Section 5 of the Limitation Act when the said appeal is consequently filed along with Order IX Rule 13 of the C.P.C.

9. Whereas in the present case the appellant herein filed the appeal only on Section 5 of the Limitation Act alone and he has not taken any steps to file appeal under Order IX Rule 13 of C.P.C. and even he has also not mentioned the I.A. number of IX Rule 13 of C.P.C. and its result in the present appeal. Even though this appeal is allowed, for condonation of the delay, as the appellant herein has not preferred any appeal against the orders of dismissal of the petition under Order IX Rule 13 C.P.C., there may not be any use for the appellant herein. So that as per the above dictum, it is appearing that the appeals must be carried simultaneously on Section 5 of the Limitation Act along with Order IX Rule 13 of C.P.C. In any case, if appeal is not carried on Order IX Rule 13 C.P.C., carrying the appeal only on Section 5 of the Limitation Act, the appeal is not maintainable, the remedy is preferring Revision before the Hon'ble High Court.

10. The Learned counsel for the appellant has also submitted another dictum which “**Government of A. P. through B. Satyam v. Secretary. State Transport Authority, Andhra Pradesh, Hyderabad**”.² The ratio laid down in the said dictum is not squarely applicable to the case on hand, as the appellant herein has not

² 1991 (1) ALT 496 :: AIR 1994 AP 327 Dated 5.2.1991

carried Appeal even against Order IX Rule 13 of the C.P.C. and simply he filed the appeal against only Section 5 of the Indian Limitation Act alone.

11. As per the contentions of the respondent, it is appearing that the appellant herein got knowledge about the suit and as per the orders of the trial Court, the respondent has received the balance of the sale consideration amount of ₹.1,00,000/- on 16.02.2023 by way of D.D. and as such the appellant got knowledge about the filing of the above suit, now he is taking plea only in order to avoid the terms of the decree or to cause delay, or obstruction of the decree that was passed by the trial Court.

(i) The other contention taken by the Respondent is that as the appellant has not carried appeal under Order IX Rule 13 of C.P.C. and as such carrying the appeal against the only Section 5 of the Limitation Act alone without carrying the appeal under Order IX Rule 13 of the C.P.C. is not permissible.

(ii) This Court is conceding with the submissions made by the learned counsel for the respondent. As the appellant has not carried any appeal on Order IX Rule 13 of C.P.C. and simply alone carried the appeal on Section 5 of the Limitation Act alone, as such the Section 5 of the Limitation Act not appealable order under Order XLIII of the C.P.C. and as such the appeal is liable for dismissal. Accordingly, the point is answered.

12. In the result, the appeal is dismissed. But in the circumstances of the case, no order as to costs.

Dictated and transcribed using Adalat AI, corrected and pronounced by me in the Open Court, this the 11th day of February 2026.

Sd/-(G.SRINIVAS)
Principal District Judge
NELLORE

APPENDIX OF EVIDENCE

---NIL---

Sd/-(G.SRINIVAS)
Principal District Judge
NELLORE