

[3397]

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WEDNESDAY ,THE THIRTEENTH DAY OF NOVEMBER

TWO THOUSAND AND TWENTY FOUR

:PRESENT:

HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO



IA No. 1 OF 2023

IN

SA NO: 697 OF 2023

Between:

1. Pukkalla Sandamma, wife of late Nallayya, Hindu, aged 58 years, residing at beach road, Kalingapatnam, Srikakulam District.
2. Pukkalla Sharatbabu, son of late Nallayya, Hindu, aged 35 years, residing at Kalingapatnam, Gara Mandalam, Srikakulam District.
3. Pukkalla Poornachandra, son of late Nallayya, Hindu, aged 30 years, residing at Kalingapatnam, Gara Mandalam, Srikakulam District

...Petitioners/Appellants

(Petitioner in SA 697 OF 2023

on the file of High Court)

AND

1. P Mandanababu, Son of Late Chinna Suryanarayana, Hindu, aged 32 years, residing at Vadapalem Village, LI/o. Kalingapatnam, Gara Mandalam, Srikakulam District.

Respondent/Respondent

2. Pukkalla Nallayya, (died)
3. Varadi Bapanayya, son of late Adinarayana, Hindu, aged 62 years, Residing at beach road, Kalingapatnam, Gara Mandalam, Srikakulam District.

4. Mylapalli Laxmikanthamma, wife of late sandayya, Hindu, aged 58 years, residing at main road leading to MatchelasemVadapalem, Gara Mandalam, Srikakulam District.
5. Bovilili Venu, son of late Balaji, Hindu, aged 65 years, retired teacher, residing at Vadapalem, Gara Mandalam, Srikakulam District.
6. Boyina Venkatarao, , son of late Kanakarao, Hindu, aged 53 years, Door No.1-21, Madhurapalli, connativanipalem, Madhuravada sub-Devision, China GadiliMandalam, Madhuravada, Visakhapatnam.
7. Nekkanti Venkateshwararao, son of Ramakrishna, Hindu, aged 45 years, Plot No. 6, Pradeep Nagar, Vijayanagaram town and District.
8. Vegi Padmini Sinha, son of Vegi Gnanendra Venkata Satyanarayana Sinha, Hindu, aged 41 years, plot No. F.3, Industrial Estate, Mayuri Agencies, Vijayanagaram town and District.

...Respondents/Respondents
(Respondents in-do-)

Counsel for the Petitioners : SRI S.V.S.S.SIVA RAM

Counsel for the Respondents : SRI S LAKSHMINARAYANA REDDY

Petition under Section 151 CPC is filedpraying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of 1731 days in representing the above Second Appeal, Pending disposal of SA No. 697 of 2023, on the file of the High Court.

The court while directing issue of notice to the Respondents herein to show cause as to why this application should not be complied with, made the following order.(The receipt of this order will be deemed to be the receipt of notice in the case).

ORDER

“This application is filed seeking to condone the delay of 1731 days in representing the above Second Appeal.

The case of the petitioners in brief is as follows:

The petitioners herein are the appellants in the Second Appeal. The respondent No.1 herein has filed a suit in O.S.No.83 of 2003 on the file of the Principal Senior Civil Judge, Srikakulam for partition of the suit schedule property into two shares and for separate possession and the learned trial Judge had decreed the suit. Aggrieved against the said Decree and Judgment dated 12.12.2012, the appellants had preferred A.S.No.17 of 2023 on the file of the III Additional District Judge-Cum-Family Court, Srikakulam, wherein the learned First Appellate Judge also dismissed the said Appeal Suit by confirming the finding given by the learned trial Judge in its Judgment and Decree dated 12.12.2012 in O.S.No.83 of 2003.

The petitioners herein pleaded that though they have applied for the certified copy of the impugned Decree and Judgment on 03.10.2018, the same was delivered to them on 26.12.2018 and thereafter they have filed the second appeal in the year 2019. The petitioners further pleaded that the petitioner No.1 suffered due to Covid-19 for almost one (01) year and she also suffered several medical issues due to post Covid-19. The petitioner No.1 pleaded that in the Month of November, 2023, when she completely got recovered, she requested her counsel to inform the status of the case, but to her utter surprise the clerk of her counsel verified from the Court record and found that due to certain office objections, the case file was returned on 14.03.2019, due to inadvertence her counsel had not informed regarding the return of the case file and that the said case file was not resubmitted within time. The petitioners further submitted that due to the aforesaid circumstances, the case file was represented with a delay of 1731 days.

The respondent No.1/Plaintiff had filed a counter affidavit and contended that the delay of 1731 days in representing the Second Appeal is an inordinate delay and the said delay was not at all explained by the petitioners in their affidavit. The respondent No.1 further contended that

as per allegations made by the petitioners in their affidavit, the present second appeal has been returned on 14.03.2019 and there is no explanation by the petitioners from 14.03.2019 to till the date of representation of the second appeal before the Registry. the respondent No.1/plaintiff further contended that the delay of 1731 days in representing the Second appeal is an inordinate delay and as there is no explanation by the petitioners herein, Sri S.Lakshminarayana Reddy, learned counsel for the respondent No.1/plaintiff has vehemently opposed to allow the application filed seeking to condone the delay in the representing the second appeal and requested to dismiss the application as there are no merits in the said application filed by the petitioners.

Heard Sri S.V.S.S.Siva Ram learned counsel for the appellants/petitioners and Sri S.Lakshminarayana Reddy, learned counsel for the respondents and perused the material available on record.

Learned counsel for the respondents has relied on the Order dated 20.07.2023, passed by this Court in *Kurakula Satyanarayana Vs Kurakula Nagamai and Ors.*, in C.R.P.No.181 of 2019 and the ratio laid down in the said case law has no dispute and the facts in the said case relates to a Revision Petition filed against the orders passed in Interlocutory Application i.e., I.A.No.1257 of 2018 which is filed before the trial Court.

Learned counsel for the respondents has also placed reliance on the Judgment passed by the High Court of Madras in *Azhagu Samasivam Vs Azhagu Bangaru and Ors*¹, wherein the ratio laid down in the aforesaid case law is regarding the representation of appeal suit against the order passed by the First Appellate Court, Madras Division.

Learned counsel for the respondents has placed reliance on the Judgment of High court of Madras in *A.Muthusamy Vs. Muniammal and*

¹ 2020 SCC Online Mad 2354

Ors², wherein the said case law is regarding the Interlocutory Application filed seeking to condone the delay of representing the appeal. Learned counsel for the respondents has also placed reliance on the Judgment passed by the Composite High Court of Judicature of Andhra Pradesh at Hyderabad in C.R.P.2742 of 2010 in *G.Hanumantha Rao Vs.L.V.Subbhaiah*³, wherein the High Court of Andhra Pradesh at Hyderabad has held that the condonation of delay in representation is always in the discretion of the Court and hardly the opposite party would have any say in the matter and also further held that it is not uncommon that the plaints, applications or appeals presented before the Courts, are returned with objections duly stipulating time for compliance and that the parties or their advocates take more time than the stipulated one to comply with the objections.

The Composite High Court of Andhra Pradesh at Hyderabad had further held in the paragraph No.7 of its aforesaid Judgment that “*A different approach needs to be adopted for condonation of delay in representation in respect of original proceedings on the one hand and appeals and other proceedings, on the other*”.

The learned counsel for the respondents has also placed reliance in a Judgment passed by the Hon'ble Apex Court in *P.K.Ramachandran Vs State of Kerala and Anr.*,⁴. The facts in the case on hand are that as per the endorsement of the Registry, the present Second Appeal has been filed within the period of limitation.

Learned Counsel for the appellants/petitioners would contend that the written order made by the Registry may be treated as an Administrative Order and it cannot be treated as a Judicial one, the same

² 2006(1) CTC 187

³ 2011 (4) ALD 246

⁴ AIR 1998 Supreme Court 2276

has been held by the High Court of Madras in *Bhuvaneswari vs R.Elumalai*⁵.

In a case of *Y.Cusbar Vs K.Subbarayan*⁶, a Division Bench of the High Court of the Madras has held that “...the Court must adopt liberal attitude when it comes to the condoning of the delay in representation.”

In a case of *G.Shravan Kumar vs D. Srinivasulu (Died) Per Lrs. and Ors.*⁷, the Composite High Court of Andhra Pradesh at Hyderabad has also held as follows:

“11. There is no provision in C.P.C., which prescribes the maximum period within which a returned proceeding should be represented into the Court....”

Admittedly, in the case on hand, as per the endorsement of the Registry, the present Second Appeal has been filed within the period of limitation and the delay of 1731 days had occurred in the representation of the Second Appeal. The contention of the petitioner No.1 is that she had suffered many health issues due to Covid-19 and undoubtedly, the said delay in representing the Second Appeal is inordinate delay and if this application is not allowed, then the appellants/petitioners' substantial right of filing of the second appeal will be defeated and further the Second Appellate Court has to verify whether there are any substantial questions of law involved or not. As stated *supra*, the Second Appeal has been filed within a period of limitation. If the delay in representing the Second appeal is condoned, no prejudice will be caused to the respondents, the respondents are having the liberty to raise their contentions before this Court at the time of admission of the Second Appeal.

⁵ 2002 CPC 22

⁶ 1993 TNLJ 375

⁷ 2004 (1) ALD 639

On considering the aforesaid circumstances, as the second appeal is filed within the period of limitation, I am of the considered view that the inordinate delay of 1731 days in representing the second appeal has to be condoned by imposing costs of Rs.10,000/-. Therefore, the appellants/petitioners herein are directed to pay a cost of Rs.10,000/- (Rupees Ten Thousand Only) to the respondent No.1/Plaintiff within a period of four (04) weeks. It is made clear that if the appellants/petitioners fails to comply this order, this petition shall stands automatically dismissed.

Accordingly, I.A.No.1 of 2023 is allowed with costs."

//TRUE COPY//

SD/-B.CHITTI JOSEPH
ASSISTANT REGISTRAR
SECTION OFFICER

For ,

To,

1. P Mandanababu, Son of Late Chinna Suryanarayana, Hindu, aged 32 years, residing at Vadapalem Village, LI/o. Kalingapatnam, Gara Mandalam, Srikakulam District.
2. Varadi Bapanayya, son of late Adinarayana, Hindu, aged 62 years, Residing at beach road, Kalingapatnam, Gara Mandalam, Srikakulam District.
3. Mylapalli Laxmikanthamma, wife of late sandayya, Hindu, aged 58 years, residing at main road leading to MatchelasemVadapalem, Gara Mandalam, Srikakulam District.
4. Bovilili Venu, son of late Balaji, Hindu, aged 65 years, retired teacher, residing at Vadapalem, Gara Mandalam, Srikakulam District.
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6. Nekkanti Venkateshwararao, son of Ramakrishna, Hindu, aged 45 years, Plot No. 6, Pradeep Nagar, Vijayanagaram town and District.
7. Vegi Padmini Sinha, son of Vegi Gnanendra Venkata Satyanarayana Sinha, Hindu, aged 41 years, plot No. F.3, Industrial Estate, Mayuri Agencies, Vijayanagaram town and District.(1 to 7 By RPAD)
8. One CC to SRI. S.V.S.S.SIVA RAM Advocate [OPUC]
9. One CC to SRI. S LAKSHMINARAYANA REDDY Advocate [OPUC]
10. **One spare copy**

HIGH COURT

VGKR,J

DATED:13/11/2024

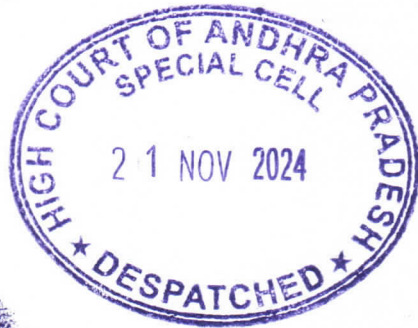
POST THE MATTER AFTER FOUR (04) WEEKS.

ORDER

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I.A.NO.1 OF 2023 IS ALLOWED WITH COSTS