



2024:TSHC:36223

[3208]

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY, THE NINETEENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SMT JUSTICE P.SREE SUDHA

CIVIL REVISION PETITION NO: 869 OF 2024

Petition under Article 227 of the Constitution of India aggrieved by the Docket Order 15-02-2024 made in I.A. No. 694 of 2005 in O.S. No. 34 of 2002 on the file of the Court of the Senior Civil Judge, Vikarabad, Vikarabad District.

Between:

Md Shakeel Khan, S/o. Mohd Burhan Khan, Aged about 55 years, Occ. Business and Agriculture, R/o. H.No. 19-3-263/A/40, Achi Reddy Nagar, Bibi Ka Chesma, Hyderabad

**...Petitioner / Respondent No. 5 / Defendant No. 2
AND**

1. T Yadagiri, S/o. Narayana, Aged about 51 years, Occ. Driver, R/o. H.No. 16-1-24/B/2/1, III Floor, Lalita Satyam Complex, Saidabad Colony, Hyderabad - 59

...Respondent / Petitioner / Defendant

2. R Srisailam, S/o. R Kistaiah, (Died per Lrs)
3. R Anasuja, W/o. Late Srisailam, Aged about 58 years, Occ. Housewife, R/o. H.No. 4-1-43, Subashnagar Colony, Vikarabad, Vikarabad District (Ranga Reddy)
4. R Durga Rani, D/o. Late Srisailam, Aged about 40 years, Occ. Housewife, R/o. H.No. 4-1-43, Subashnagar Colony, Vikarabad, Vikarabad District (Ranga Reddy)
5. R Santhosha, D/o. Late Srisailam, Aged about 35 years, Occ. Housewife, R/o. H.No. 4-1-43, Subashnagar Colony, Vikarabad, Vikarabad District (Ranga Reddy)

...Respondents / Respondents No. 1 to 4 / Plaintiffs



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IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the Docket Order dated 15.02.2024 passed in I.A No. 694 of 2005 in OS No. 34 of 2002 on the file of the Court of the Senior Civil Judge, Vikarabad, Vikarabad District, pending disposal of the main C.R.P.

Counsel for the Petitioner : Sri Koppula Gopal

Counsel for the Respondent No. 1 : Sri Alluri Raghu Rama Aurava

Counsel for the Respondent No. 4 : Sri S Raghavender Reddy

The Court made the following Order :



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THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

CIVIL REVISION PETITION No.869 of 2024

ORDER:

This Civil Revision Petition is filed against the Order dated 15.02.2024 in I.A.No.694 of 2005 in O.S.No.34 of 2002 passed by the learned Senior Civil Judge, Vikarabad.

2. Respondent No.1 herein had filed an application *vide* I.A.No.694 of 2005 in O.S.No.34 of 2002, against the petitioner and other respondents herein, seeking to condone the delay of 1010 days in filing the petition to set aside the *ex-parte* preliminary decree dated 30.12.2002 in O.S.No.34 of 2002. The trial Court allowed the said application on costs of Rs.500/- on the ground that other side reported no objection to allow the petition. Aggrieved by the said Order, respondent No.5 therein preferred the present Civil Revision Petition.

3. The learned Counsel for the petitioner mainly contended that preliminary decree was passed on 30.12.2002, final decree was passed on 21.10.2003 and the sale certificate was issued through Court on 03.12.2004, after passing of the Order in E.P.No.6 of 2004. The Court has issued sale certificate by executing the registered sale deed in favour of respondent No.2.

He in turn executed the registered sale deed in favour of one Syed Omer and Mohammed Asif and they in turn executed the registered sale deed dated 26.10.2010, *vide* document No.3071 of 2010, in favour of the petitioner herein, as such he filed an application to implead him and it was allowed on 11.02.2020. He further contended that no sufficient reason was mentioned for condonation of the delay and the delay of 1010 days was abnormal. Therefore, requested the Court to set aside the Order of the trial Court.

4. Initially, O.S.No.34 of 2002 was filed by respondent No.2 against respondent No.1 herein for recovery of the amount basing on the mortgage deed. It was decreed on 30.12.2002, in which respondent No.1 was remained *ex-parte*, as such respondent No.1 filed an application *vide* I.A.No.694 of 2005 in O.S.No.34 of 2002, to condone the delay of 1010 days in filing the petition to set-aside the *ex-parte* decree dated 30.12.2002 and stated that he was not staying in the village due to family disputes and shifted to Hyderabad. He further stated that he was not aware of the proceedings initiated by respondent No.2 till 25.10.2005. When one of his villagers by name Srinivas informed him that respondent No.2 was trying to grab the land by proclaiming in the village, he went to Vikarabad, verified the



Court records and found that *ex-parte* decree was passed against him. He also stated that even in the auction proceedings conducted in the Execution Petition, respondent No.2 himself participated in the auction and purchased the property for much lesser price than the market value. He came to know about the Execution Petition proceedings through one the villagers. Therefore, requested the Court to condone the delay.

5. In the counter filed by respondent No.2 in I.A.No.694 of 2005, he stated that he filed suit for recovery of amount against respondent No.1, preliminary decree was passed and the final decree was also passed. Thereafter, he filed E.P.No.06 of 2004 and purchased the property in the auction. He further stated that respondent No.1 was doing business in the name and style of "Surya Enterprises" and collected huge money from several innocent people and misappropriated the same. To avoid them and to defraud the creditors, he absconded from Vikarabad during day times, but he was residing in Vikarabad during night times. Even though notice in E.P was served on one of his brothers, none of them appeared before the Court. He also stated that respondent No.1 never shifted to Hyderabad and further he has not informed him regarding shifting to Hyderabad and address therein. He further stated that he

purchased the property for more than double to the market value as on the date of auction. Even in the E.P proceedings, though the brother of respondent No.1 received the notice, he gave paper publication through substitute service. He realized the decree after 7 years. The respondent No.1 had not stated sufficient and reasonable cause for condoning the delay. He also stated that after the execution of the E.P proceedings, there are several transactions through registered sale deeds. Respondent No.2 died and his legal representatives are brought on record. Respondent No.2 was the *bona fide* purchaser and he has to protect his interest.

6. The main contention of the respondent No.1 is that he was not in the village as he shifted to Hyderabad and it was denied by the petitioner and respondents No.2 to 5 in *toto*. Though the delay is nearly about three years, the reasons stated by the respondent No.1 for condoning the abnormal delay is neither convincing nor satisfactory. Admittedly, he obtained loan through mortgage and respondent No.2 filed the suit for recovery of amount and also sent the notices. Respondent No.1 simply stated that due to family disputes, he shifted to Hyderabad and running an Auto and came to know about the decree passed against him through one of the villagers. He also



stated that E.P notice was also not served upon him, whereas respondent No.2 stated that notice was serviced upon the brother of respondent No.1.

7. The learned Counsel for the petitioner herein relied upon the decision of the Hon'ble Apex Court in the case of **Pathupati Subba Reddy (Died) by L.Rs and others Vs. The Special Deputy Collector**,¹ in which it was held that *"the law of limitation is based on public policy and is enshrined in the legal maxim 'interest reipublicae ut sit finis litium', meaning there might be an end to a litigation. Statutes of limitation and prescription are statutes of peace and repose. When a right is not exercised or a remedy is not availed for a long time, it must cease to exist nad law of limitation is a way to achieve it. Law of limitation bars time barred remedy rather than right with passage of time."*

8. The learned Counsel for respondent No.1 relied upon the decision of this Court in the case of **Mir Mohsin Mohiuddin Ali Khan Vs.Mohd. Jani**,² in which it was held that *"purpose of*

¹ (2024) 4 SCR 241

² 2022 (3) ALT 610 (TS)

Courts of law is to render substantial justice by giving due opportunity to both parties to exhibit their respective stands."

9. No doubt, the Courts are empowered to exercise discretion to condone the delay, but the said discretion should not be arbitrary and illegal. In this case, after giving notice to the respondent No.1, publication was also given. As the respondent No.1 remained *ex-parte*, *ex-parte* Order was passed and even in the E.P proceedings, notice was served upon the brother of respondent No.1, but he did not turn up. This shows that there is clear negligence on the part of respondent No.1 and he kept quiet for nearly about three years and failed to pursue the litigation with due diligence. A person who sleeps over the matter cannot take advantage of his own mistake at later point of time. The trial Court without considering all the facts, simply observed that other side Counsel reported no objection and allowed the application on costs of Rs.500/-. The said Order of the trial Court is patently erroneous and is liable to be set aside.

10. In the result, the present Civil Revision Petition is allowed, setting aside the Order of the trial Court dated 15.02.2024 passed in I.A.No.694 of 2005 in O.S.No.34 of 2002. There shall be no order as to costs.



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Miscellaneous petitions pending, if any, shall stand closed.

Sd/- T. JAYASREE
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Senior Civil Judge, Vikarabad, Vikarabad District
2. One CC to Sri Koppula Gopal, Advocate [OPUC]
3. One CC to Sri Alluri Raghu Rama Aurava, Advocate [OPUC]
4. One CC to Sri S Raghavender Reddy, Advocate [OPUC]
5. Two CD Copies

VA/gh



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HIGH COURT

DATED:19/09/2024

ORDER

CRP.No.869 of 2024



ALLOWING THE CRP

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[Signature]
24/10/2024