

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

MONDAY, THE THIRD DAY OF JUNE

TWO THOUSAND AND TWENTY FOUR

**:PRESENT:**

**THE HONOURABLE DR. JUSTICE G.RADHA RANI**

**IA No. 1 OF 2022**

**IN**

**SA NO: 250 OF 2015**

**Between:**

B Chilkamma, w/o B Ram Reddy, occ household s/o late E Ram Reddy  
aged 53 years, occ agriculture r/o no. 7-12, Plot no. 17 near  
Laxminarasimha swamy (temple Main road, Hyder-shah-kote village  
Rajendranagar mandal, RR district

...Petitioner/Plaintiff

(Respondent in SA 250 OF 2015  
on the file of High Court)

**AND**

1. Eedamgari Narsimha Reddy, s/o late E Ram Reddy, occ agriculture  
R/o.no.2-66, Hyder-shah-kote village Rajendranagar mandal, RR district
2. Eedamgari Laxma Reddy, s/o late E Ram Reddy, occ agriculture r/o no. 2-  
66, Hyder-shah-kote village Rajendranagar mandal, RR district
3. Eedamgari Balwanth Reddy, S/o late E Ram Reddy, occ agriculture  
R/o.no. 2-66, Hyder-shah-kote village Rajendranagar mandal, RR district

4. Eedamgari Vittal Reddy, S/o late E Ram Reddy, occ agriculture r/o no. 2-66, Hyder-shah-kote village Rajendranagar mandal, RR district
5. Eedamgari Pratap Reddy, s/o late E Ram Reddy, occ agriculture r/o no. 2-66, Hyder-shah-kote village Rajendranagar mandal, RR district

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

**Counsel for the Petitioner : SRI B DANANJAYA**

**Counsel for the Respondent : SRI R SUSHANTH REDDY**

Petition under Section 5 of Limitation Act, r/w Order 41 Rule 22 of CPC praying 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 2711 day in filing the cross appeal/objections in the above second appeal and receive the same, pending disposal of SA No.250 of 2015, on the file of the High Court.

The Court made the following

**ORDER**

**THE HONOURABLE DR.JUSTICE G. RADHA RANI**

**I.A.No.1 of 2022**

**In**

**X-Objection No.50 of 2022**

**In**

**S.A.No.250 of 2015**

**ORDER:**

This application is filed by the petitioner - plaintiff to condone the delay of 2711 days in filing the cross-appeal / objections in S.A.No.250 of 2015.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. Learned counsel for the petitioner - plaintiff submitted that the petitioner - plaintiff filed the suit for partition and separate possession of the suit schedule property. The same was dismissed on 31.12.2007. Aggrieved by the same, the petitioner - plaintiff filed an appeal vide A.S.No.226 of 2008 on the file of the V Additional District Judge, Rangareddy District at L.B.Nagar. The appeal was partly allowed and a preliminary decree was passed declaring that the petitioner - plaintiff was entitled to get one-sixth share in the suit schedule A property. In so far as B and C properties were concerned, the same was dismissed. Aggrieved by the part decree, the respondent preferred an appeal. The petitioner filed a caveat in the appeal and instructed her counsel to file cross-appeal / objections. The same were prepared and was given to his colleague

advocate Sri C.Srinivas for filing cross-objections. On the last date of hearing, i.e. on 12.10.2022, this Court directed the parties to file synopsis. While preparing the synopsis, they noticed that the cross-objections / appeal were not found in the file. They thought that the same were misplaced and they searched in their office, but of no avail. Subsequently, he made enquires in that regard and he was informed that the same were not filed. He further submitted that the cross-objections were drafted and the same were handed over to one of his colleagues Sri C.Srinivas for filing the same and he was informed that the same had been filed. The said C.Srinivas initially was clerk in his office and he used to look after the said suit filed vide O.S.No.1316 of 2004 on the file of the I Additional Senior Civil Judge, Rangareddy District at L.B.Nagar and also appeal vide A.S.No.226 of 2008 on the file of the V Additional District Judge, Rangareddy District at L.B.Nagar. During the interregnum period of the said suit and appeal, Sri C.Srinivas was enrolled as an advocate. In spite of enrolling as an advocate, the said C.Srinivas was looking after the section work in the above proceedings as well as in the above appeal. As such, he reposed confidence on him and was under impression that he filed the cross-appeal / objection in the second appeal. But unfortunately, the said C.Srinivas, advocate died in the year 2008 due to brain cancer. After coming to know about the non-filing of cross-objection / appeal, the petitioner tried to know about the whereabouts of the family members of Sri C.Srinivas so that the copy of the

same could be filed to show her bonafides to this Court but of no avail. Due to which the delay occurred. The delay was neither willful nor wanton but due to the aforesaid facts and prayed to condone the delay and to receive the cross-objections / appeal to do substantial justice to the parties.

3.1. He further submitted that the petitioner was illiterate and was bedridden due to old age related diseases. She was on oxygen. After Covid, she was admitted in hospital on regular basis. The said facts were also to the knowledge of the respondents, who were none other than the own brothers of the petitioners. The learned Appellate Court while decreeing the suit in respect of suit schedule A property had erroneously dismissed in respect of suit schedule B property and prayed to condone the delay of 2711 days in filing the cross-appeal / objections and relied upon the judgments of the Hon'ble Apex Court in **Collector, Land Acquisition, Anantnag and another v. Mst.Katiji and Others**<sup>1</sup>, **N.Balakrishnan v. M.Krishnamurthy**<sup>2</sup> and **Mahadev Govind Gharge and Others v. The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka**<sup>3</sup>.

4. Learned counsel for the respondents on the other hand contended that the reasons stated by the petitioner in explaining the delay were not showing sufficient cause to condone the delay to file cross-appeal / objections. The

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<sup>1</sup> AIR 1987 SC 1353

<sup>2</sup> (1998) 7 SCC 123

<sup>3</sup> AIR 2011 SC 2439

counsel for the petitioner was appearing in the Second Appeal. The cause stated by the petitioner was a blatant lie. Filing the condonation of delay application after a lapse of six years without any cogent reasons was not a sufficient ground. The petitioner made her appearance in S.A.No.250 of 2015 and also filed vacate petition to vacate the interim orders granted in the Second Appeal on 23.09.2015. The petitioner was following the matter and also vehemently objecting the extension of interim orders. The filing of the cross-objections was an afterthought only to harass the respondents, who were the own brothers of the petitioner. The petitioner had not explained the day to day delay caused in not filing the cross-objections. The petition was devoid of merits and was liable to be dismissed. Learned counsel for the respondents relied upon the judgment of the Hon'ble Apex Court in **Esha Bhattacharjee v. Raghunathpur Nafar Academy**<sup>4</sup>.

5. As per Order XLI Rule 22 of CPC, the limitation for filing a cross-objection is one month from the date of service of notice of the date fixed for the hearing of appeal.

6. Order XLI Rule 22(1) of CPC reads as follows:

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that

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<sup>4</sup>(2013) 12 SCC 649

the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellant Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

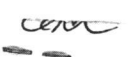
*Explanation:* A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favor of that respondent.

7. The Hon'ble Apex Court in **Mahadev Govind Gharge and Others v. The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka** (cited supra), held that:

"28. Thus, it is an undisputed principle of law that the procedural laws are primarily intended to achieve the ends of justice and, normally, not to shut the doors of justice for the parties at the very threshold. We have already noticed that there is no indefeasible divestment of right of the cross-objector in case of a delay and his



rights to file cross-objections are protected even at a belated stage by the discretion vested in the Courts. But at the same time, the Court cannot lose sight of the fact that meaning of 'ends of justice' essentially refers to justice for all the parties involved in the litigation. It will be unfair to give an interpretation to a provision to vest a party with a right at the cost of the other, particularly, when statutory provisions do not so specifically or even impliedly provide for the same. The provisions of Order XLI Rule 22 of the Code are akin to the provisions of the Limitation Act, 1963, i.e. when such provisions bar a remedy, by efflux of time, to one party, it gives consequential benefit to the opposite party. Before such vested benefit can be taken away, the Court has to strike a balance between respective rights of the parties on the plain reading of the statutory provision to meet the ends of justice. If a cross-objector fails to file cross-objections within the stipulated time, then his right to file cross-objections is taken away only in a limited sense. To that extent a benefit is granted to the other party, i.e. the appellant, of having their appeal heard without such cross-objections. Still, however, if the Court is of the opinion that it is just and proper to permit the filing of cross-objection even after the expiry of the statutory limitation of one month, it is certainly vested with power to grant the same, but of course, only after hearing the other party. That is how the rights of the parties are to be





balanced in consonance with the scheme of  
Order XXI Rule 22 of the Code."

8. The Hon'ble Apex Court in **N.Balakrishnan v. M. Krishnamurthy** (cited supra) held that:

"9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim "Interest republicae up sit finis litium" (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide **Shakuntala Devi Jain Vs. Kuntal Kumari** [AIR 1969 SC 575] and **State of West Bengal Vs. The Administrator, Howrah Municipality** [AIR 1972 SC 749].

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

9. The Hon'ble Apex Court in **Collector, Land Acquisition, Anantnag and another v. Mst.Katiji and Others** (cited supra) also stated that Courts should adopt liberal approach.

10. Considering the judgments of the Hon'ble Apex Court in all the above cases, as well as in the **Esha Bhattacharjee v. Raghunathpur Nafar Academy** (cited supra) and as the appeal filed by the respondents herein is pending vide S.A.No.250 of 2015 and the entire decree is before the Court and no prejudice would be caused to the respondents even if the delay is condoned and the matter could be decided on merits after hearing both the parties, it is considered fit to condone the delay of 2711 days in filing the cross-objections / appeal in S.A.No.250 of 2015 on payment of costs of Rs.2,000/- to the respondents within a period of 15 days from the date of receipt of a copy of this order.

11. In the result, the application is allowed subject to payment of costs of Rs.2,000/- to the respondents within 15 days from the date of receipt of a copy of this order.

**//TRUE COPY//**

**SD/-MOHD. ISMAIL  
ASSISTANT REGISTRAR**

**SECTION OFFICER**

**To,**

1. One CC to SRI R SUSHANTH REDDY Advocate [OPUC]
2. One CC to SRI B DANANJAYA Advocate [OPUC]
3. One spare copy

**HIGH COURT**

**DR.GRR,J**

**DATED:03/06/2024**

**ORDER**

**IA NO.1 OF 2022  
IN  
SA.No.250 of 2015**

**DIRECTION**

