

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

WEDNESDAY ,THE THIRTIETH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE DR. JUSTICE G. RADHA RANI

I.A.No. 1 OF 2019

IN

SECOND APPEAL NO: 1181 OF 1999

Between:

1. M.Bal Raju, S/o. M. Daniah, Age: 46 years, Occ: Private Service
2. M. Mohan, S/o. M. Daniah, Age: 46 years, Occ: Private Service

(Both are residents of H.No. 12-2-783, Reti Bowli, Hyderabad)

...Petitioner/Petitioner

AND

1. Smt.Khaja Begum, W/o. Sri Late Nayeem Ahmad Siddique, Occ: Pensioner, R/o. H.No. 12-2-781, Reti Bowli, Hyderabad.
2. Waseem Ahmed Siddique, S/o. Late Late Nayeem Ahmad Siddique, Occ: Pensioner, R/o. H.No. 12-2-781, Reti Bowli, Hyderabad
3. Faheem Ahmed Siddique, S/o. Late Nayeem Ahmad Siddique, Occ: Pensioner, R/o. H.No. 12-2-781, Reti Bowli, Hyderabad

...Respondents

Petition under Section 5 of Limitation Act 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 586 days in filing the above application to set-aside the dismissal order dt.11-10-2017 in the interest of justice.

Counsel for Appellants : Sri M.R.S. Prasad

Counsel for Respondents : Sri Mohd. Gulam Hussain

The Court made the following: ORDER

This application is filed by the petitioners - appellants to condone the delay of 586 days in filing the application to set aside the dismissal order dated 11.10.2017.

Heard Sri M.R.S.Prasad, learned counsel for the petitioners – appellants and Sri Mohd.Gulam Hussain, learned counsel for the respondents.

Learned counsel for the petitioners submitted that the respondent No.1 was the plaintiff. She filed O.S.No.3187 of 1995 on the file of the learned VII Assistant Judge, City Civil Court, Hyderabad for declaration of her right of easement of passage through 150 feet wide road situated on the northern side of her property bearing No.12-2-781, Reti Bowly, Hyderabad, for mandatory injunction for removal of hut raised by the petitioners and for permanent injunction. The trial court decreed the suit on an erroneous view of the facts and legal position vide judgment and decree dated 17.11.1997. Questioning the same, the petitioners preferred A.S.No.449 of 1997 on the file of the learned V Additional Chief Judge, City Civil Court, Hyderabad and the said appeal was also dismissed confirming the judgment of the trial court. Against the concurrent findings of the courts below, the petitioners filed the above Second Appeal. Only in the second week of June 2019, the petitioners came to know about the disposal of the Second Appeal when they visited the office of their counsel to enquire about the status of the Second Appeal and came to know that the appeal was dismissed due to the mistake in the office of their counsel and further submitted that the petitioners have a good case in the Second Appeal and prayed to set aside the dismissal order 11.10.2017 and to restore the Second Appeal to the file.

Learned counsel for the respondents on the other hand contended that the respondent No.1 – plaintiff died and her legal representatives were brought on record as respondents 2 and 3. The deceased respondent No.1 was the owner and possessor of the suit house. There was a road in front of her house property. The petitioners were making illegal attempts to make construction over the road in front of her house property. As such, the suit was filed by respondent No.1 to restrain the petitioners from making construction on the road. The suit filed by respondent No.1 was decreed. The Lower Appellate Court also confirmed the findings of the trial court. The petitioners were trying to make construction in front of house property of the

respondents contrary to law. The Second Appeal was dismissed for default due to non-prosecution on 11.10.2017. The petitioners did not take steps for restoration of the appeal within time. There was an inordinate delay of 586 days and the petitioners failed to explain the cause for such long delay. No substantial questions of law were involved in the Second Appeal. The petitioners failed to explain the day to day delay in filing the application for condonation of delay. Apparently, the petitioners were negligent and throwing blame on the clerk of the advocate of the petitioners and prayed to dismiss the application.

Perused the record.

The record would disclose that the Second Appeal is of the year 1999 and the same was admitted on 05.01.2000 granting interim stay. But the said appeal was dismissed for non-prosecution on 11.10.2017 and the petitioners filed an application to set aside the dismissal order dated 11.10.2017 vide I.A.No.2 of 2019 along with the application for condonation of 586 days in filing the said application vide this application.

Considering the submissions of the learned counsel representing both the parties that the dispute is still continuing between the parties and the Second Appeal was also admitted considering that there were substantial questions of law arising in the matter, though there were concurrent findings of the courts below against the petitioners herein and as it is always fit to dispose of the matter on merits rather than dismissing the same for non-prosecution and considering the reason stated by the learned counsel for the petitioners that due to their advocate's clerk, who could not trace out the bundle when the appeal was listed in the month of October, 2017, he did not inform their counsel, due to which the counsel could not appear on the said date and the appeal was dismissed for non-prosecution on 11.10.2017, it is considered fit to condone the delay of 586 days in filing this application subject to payment of costs of Rs.5,000/- to the other side within a period of one (01) week from the date of this order and subject to the condition that the learned counsel for

the petitioners would argue the matter without taking any further adjournments on the next date of hearing.

In the result, this application is allowed condoning the delay of 586 days in filing this application to set aside the dismissal order dated 11.10.2017 subject to payment of costs of Rs.5,000/- to the other side within a period of one (01) week from the date of this order and subject to the condition that the learned counsel for the petitioners would get ready to argue the matter without taking any further adjournments

Sd/- P. CH. NAGABHUSHAMBA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The V Additional Chief Judge, City Civil Court, at Hyderabad.
2. The VII Assistant Judge, City Civil Court, at Hyderabad.
3. The Section Officer, VR Section, High Court for the State of Telangana at Hyderabad.
4. The Section Officer, Second Appeal Section, High Court for the State of Telangana at Hyderabad.
5. One CC to Sri M.R.S. Prasad, Advocate [OPUC]
6. One CC to Sri Mohd. Gulam Hussain, Advocate [OPUC]
7. Two CD Copies

Njb/gh



NOTE: As per the Court Order dated 30.10.2024 passed in I.A.No. 1 of 2019 in S.A.No. 1181 of 1999, the Counsel for the Petitioners herein are directed to pay costs of Rs.5,000/- to the other side within a period of one(01) week from the date of this order.

HIGH COURT

DATED:30/10/2024

POST ON 02.12.2024

ORDER

I.A.No. 1 of 2019

In

SA.No.1181 of 1999



ALLOWING THE I.A
WITH COSTS

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