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APHC010003182023

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3331]
(Special Original Jurisdiction)

MONDAY, THE 29th DAY OF JUNE 2026

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

CIVIL REVISION PETITION NO: 12/2023

Between:

1. VANGAPANDU SRINIVASA RAO, S/O. KRISHNA MURTHY, AGE. 54 YEARS, OCC. AGRICULTURE, R/O. D.NO.3-110, PEDDADA VILLAGE, PEDAPUDI MANDAL, EAST GODAVARI DISTRICT.
2. VANAGAPANDU SYAMALA, W/O. VANGAPANDU SRINIVASA RAO, AGE. 46 YEARS, OCC. HOUSEWIFE, R/O. D.NO.3-110, PEDDADA VILLAGE, PEDAPUDI MANDAL, EAST GODAVARI DISTRICT.

...PETITIONER(S)

AND

1. SALADI VENKATA RAMANA, S/o. Satyanarayana, Aged. 47 years, Occ. Business, R/o. D.No.33-1-1811, Main Road, New Bombay Sweets, Kakinada.

...RESPONDENT

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to Memorandum of Civil Revision Petition against the order dt.06.12.2022 in IA No.1218/2019 in OS No.77 of 2017 on the file of the Court of the IV Additional District Judge, Kakinada.

IA NO: 1 OF 2023

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 grant stay all further proceedings in EP No.30/2018 in OS No.77 of 2017 on the file of the Court of the IV Additional District Judge, Kakinada pending disposal of the above CRP and pass

Counsel for the Petitioner(S):

1. E V V S RAVI KUMAR

Counsel for the Respondent:

1. G RAMA GOPAL

The Court made the following:

ORDER

The defendants in the suit filed the above revision assailing the order dated 06.12.2022 in I.A.No.1218 of 2019 in O.S.No.77 of 2017 on the file of IV Additional District Judge, Kakinada.

2. The parties to this revision are referred to as they were arrayed in the plaint.

3. a) The plaintiff filed the suit O.S.No.77 of 2017 on the file of IV Additional District Judge, Kakinada, against the defendants for recovery of amount on the strength of promissory note dated 07.10.2015. The address of the defendants is shown as “Flat No.D1, Kalyani Heights, near Ravindra Bharathi Public School, Venkat Nagar, Kakinada”. The summons sent to the address mentioned in the plaint was returned with an endorsement that the defendants were not residing at the said address. It seems the trial Court ordered substitute service by way of paper publication, and the summons was served by that method. Since

none appeared despite service, the defendants were set *ex parte* and later, a decree was passed on 14.02.2018.

b) The defendants filed I.A.No.1218 of 2019 under Section 5 of the Limitation Act to condone the delay of 474 days in filing the petition under Order IX Rule 13 of CPC to set aside the *ex parte* decree dated 14.02.2018. The 1st defendant deposed to the affidavit. It was contended, *inter alia*, that he sustained losses in the rice mill business and his properties were put to auction by the Debt Recovery Tribunal, Visakhapatnam. He went to his native place, Pedana, in search of livelihood and stayed at Bhimavaram, West Godavari District, along with his family. On 26.05.2019 the defendants' relative informed about the paper publication made in Eenadu daily newspaper about the auction of properties of the 2nd defendant. On receipt of said information, he verified and came to know about the proceedings in E.P.No.30 of 2018 and the decree dated 14.02.2018 in O.S.No.77 of 2017. Of course, in the affidavit filed in support of the petition, he pleaded that he had no acquaintance with the plaintiff and denied the execution of the promissory note.

4. A counter was filed on behalf of the plaintiff. It was contended, *inter alia*, that the trial Court ordered conditional attachment of an extent of Ac.1.23 cents of land in I.A.No.705 of 2017 on 26.04.2017. The Amin went to the village and found that the house of the defendants was locked, and then he affixed notice to the doors of the defendants' house. Since the defendants failed to furnish security, the Amin attached the agricultural land on 08.05.2017, and a copy of the attachment was affixed in the Gram Panchayat Office, and a beat of tom-tom was made. The defendants did not mention the complete address in the cause title of the

petition. No proof was filed on how long they had been residing in Bhimavaram, and prayed to dismiss the petition.

5. During the enquiry in I.A., the 1st defendant, being the petitioner, examined himself as P.W.1. No documents were marked. No oral or documentary evidence is adduced on behalf of the respondent/plaintiff.

6. The trial court, by order dated 06.12.2022, dismissed the application. Aggrieved by the same, the present revision is filed. In the revision, an interim order was granted on 04.01.2023, and the same is being extended from time to time.

7. Heard Sri M.Radha Krishna, learned counsel representing Sri E.V.V.S. Ravi Kumar, learned counsel for the petitioners/defendants and Sri G.Ramagopal, learned counsel for the respondent/plaintiff.

8. Learned counsel for the petitioners would submit that the petitioners came to know about the decree on 26.05.2019 and immediately filed an application on 09.06.2019 to set aside the *ex parte* decree, along with a petition to condone the delay in filing the application under Order IX Rule 13 of CPC. The defendants have not been residing at the address shown in the plaint or E.P., and the defendants have shifted their residence to Bhimavaram. The summons was served through substitute service by way of paper publication. The interlocutory application was filed immediately on coming to know about the proceedings; however, the delay was reckoned from the date of the judgment. He would submit that the trial Court failed to consider the scope of Article 123 and the explanation of the Limitation Act and prayed to set aside the impugned order.

9. *Per contra*, learned counsel for the respondent, while supporting the order of the trial Court, would contend that the petitioners did not furnish the correct address in the I.A. and they failed to prove how long they have been residing in Bhimavaram, West Godavari District. He would also submit that the petitioners failed to explain the inordinate delay of 474 days in filing the petition to set aside the *ex parte* decree.

10. Now, the point for consideration is:

Whether the order dated 06.12.2022 in I.A.No.1218 of 2019 in O.S.No.77 of 2017 on the file of IV Additional District Judge, Kakinada, suffers from illegality or irregularity?

11. As seen from the cause title of the plaint, the address of the defendants is shown as “Flat No.D1, Kalyani Heights, near Ravindra Bharathi Public School, Venkat Nagar, Kakinada”. The summons sent to the petitioners to that said address was returned with an endorsement that the petitioners/defendants are not residing at the said address. The same was stated/mentioned in Paragraph-7 of the order of the trial Court. It seems that summons were served by way of substitute service, and the publication was also made in East Godavari. The trial court should have verified the record and dealt with the same. However, such an effort was made.

12. The 1st defendant was examined as P.W.1 in I.A. In the cross examination, he deposed that they resided at the address mentioned in the plaint till 2002 and at present, they are not residing in the said address. It seems, even in the E.P., the summons was served on the same address, and thereafter the paper publication was made.

13. In fact, the trial court, while discussing the issue *vis-à-vis* the address, observed as follows: "The very fact of non-mentioning the address where the petitioners have been allegedly residing at Bhimavaram does not infer that the petitioners are residing in the address shown in the plaint". Having observed so, the trial Court swayed away on presumptions and assumptions and dismissed the I.A. The trial Court completely missed the point that the petitioners have not been residing at the address shown in the plaint, and the summons was served through substitute service i.e. paper publication.

14. In the affidavit filed in support of the I.A., it was pleaded that they came to know about the publication made in the Eenadu newspaper, through a relative, about the auction on 26.05.2019, and immediately they filed the application on 09.06.2019. From the date of knowledge, the petitioners filed an application immediately, of course, within 30 days.

15. It is apt to extract Article 123 of the Limitation Act, which is relevant.

	Description of application	**Petition of limitation**	**Time from which period begins to run**
123.	To set aside a decree passed *ex parte* or to re-hear an appeal decreed or heard *ex parte*	Thirty days	The date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree.

Explanation. –For the purpose of this article, substituted service under Rule 20 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not be deemed to be due service.

16. A perusal of the article would manifest that an application to set aside the decree, the limitation prescribed is thirty days. Column No.3 of

Article 123 speaks about the time from which the period begins to run. As per the said column, the limitation begins from the date of the decree where the summons was duly served. Where the summons was not duly served, the knowledge of the applicant regarding the decree. Explanation to Article 123, makes it clear that substituted service under Rule 20 of Order V of CPC, shall not be deemed to be due service.

17. In the case at hand, as observed supra, the petitioners are not residing in Kakinada, and they shifted their residence to Bhimavaram, West Godavari District. The petitioners came to know about the decree on 26.05.2019, and thereafter immediately, they filed the application under Section 5 of the Limitation Act to condone the delay of 474 days in filing the application under Order IX Rule 13 of CPC, to set aside the *ex parte* decree dated 14.02.2018. Of course, from the date of knowledge, there is no delay.

18. The trial Court misdirected itself, since the witness could not state the name of the relative who informed about the paper publication. In fact, as noted *supra*, the return of summons by the Amin in the suit, itself, is sufficient to show that the defendants were not residing at the address shown in the plaint and hence the summons was returned.

19. The trial Court, in the considered opinion of this court, failed to consider the third column of Article 123 of the Limitation Act, as also the explanation and arrived at a wrong conclusion. In fact, from the date of knowledge, there is no delay in filing the application. However, from the date of the decree, there is a delay of 474 days in filing the petition. This crucial aspect was not considered by the trial Court.

20. A Division Bench of the composite High Court in **M.A.Qader Vs. Mohd. Asmat Ali**[1], while ordering a reference *vis-à-vis* making a separate application to condone the delay incidentally at Paragraph-9 observed as follows:

> "In the instant case, the party had knowledge of the order only on 21.10.1983, when possession was taken. He filed the present application to set aside the exparte decree on 25.10.93 i.e. within four days from the date when he had knowledge of the order and therefore the application is within time"

21. In **N.Balakrishnan Vs. M.Krishnamurthy**[2], the Hon'ble Apex Court observed that the primary duty of the Court is to adjudicate the dispute between the parties and to advance substantial justice. In Paragraphs 9 and 10, it was held thus:

> "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 a want of acceptable explanation whereas in certain other cases, delay of a 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 wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to

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[1] 1988(1) ALT 783
[2] (1998) 7 SCC 123 : 1998 SCC OnLine SC 587 : AIR 1988 SC 3222

> 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. The 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."

22. Thus, the petitioner not only assigned sufficient reasons to condone the delay but also proved the filing of the application within 30 days from the date of knowledge. The trial court failed to exercise the jurisdiction vested in it.

23. Given the discussion *supra*, the order dated 06.12.2022 in I.A.No.1218 of 2019 in O.S.No.77 of 2017 on the file of IV Additional District Judge, Kakinada is set aside. I.A.No.1218 of 2018 stands allowed on condition that the revision petitioners shall pay Rs.5,000/- (Rupees Five Thousand only) to the respondent/plaintiff within four weeks from the date of receipt of the copy of the order and file a memo before the trial Court. If the petitioners fail to pay the amount, the order in I.A.No.1218 of 2019, impugned in the revision, revives without reference to any further order. If the respondent refuses to receive the amount, the revision petitioners shall deposit the same before the Mandal Legal Services Committee, Kakinada and file a memo before the trial Court.

The trial Court shall pass appropriate orders in the petition filed under Order IX Rule 13 of CPC, after hearing both parties. The trial

Court shall also expedite the hearing of the suit, keeping in view of the circular issued by this Court vide R.O.C.No.560/OP/CELL/2022, dated 23.11.2022.

24. Accordingly, the Civil Revision Petition is Allowed. No costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE SUBBA REDDY SATTI

PVD

Whether the order is:

Speaking Yes/No / Recorded Yes/No

Reportable Yes/No / Non-Reportable Yes/No