Date of reserved for orders : 19.06.2026
Date of pronouncement : 30.06.2026
Date of uploading :

APHC010199732024

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

TUESDAY, THE 30th DAY OF JUNE 2026

**PRESENT**

**THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI**

**CIVIL REVISION PETITION NO: 934/2024**

**Between:**

1. BODDAKAYALA BHASKARA RAO, S/O LATE SATYANARAYANA, HINDU, AGED 40 YEARS, RESIDING AT D.NO.49-36-37/3, N.G.G.O'S COLONY, AKKAYYAPALEM, VISAKHAPATNAM – 530016.

**...PETITIONER**

**AND**

1. SMT MALLA MANGA, W/O NAIDU, HINDU, AGED ABOUT 59 YEARS, RESIDING AT D.NO.49-44-37/3, N.G.G.O'S COLONY, AKKAYYAPALEM, VISAKHAPATNAM – 530016
2. SMT BODDAKAYALA ARASAVILLI, W/O LATE SATYANARAYANA, HINDU, AGED ABOUT 59 YEARS, RESIDING AT D.NO.49-36-37/3, N.G.G.O'S COLONY, AKKAYYAPALEM, VISAKHAPATNAM - 530016

**...RESPONDENT(S):**

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 aggrieved by the Order dated 29.1.2024 passed in E.A.No.51 of 2022 in E.A. No.14 of 2020 in E.P.No.4 of 2017 in OS No.629 of 2004 on the

file of the IV Additional Civil Judge (Senior Division) Visakhapatnam the Petitioner herein presents this Memorandum of Civil Revision Petition to this Hon'ble Court

**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 stay all further proceedings in EP No. 04 of 2017 in OS No. 629 of 2004 on the file of IV Additional Civil Judge (Senior Division), Visakhapatnam including the sale of the EP Schedule property and pass

**IA NO: 2 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 extend the order of stay dated 10.5.2024 already passed in CRP 934 of 2024 till the disposal of the CRP and pass

**Counsel for the Petitioner:**

1. S RAJAN

**Counsel for the Respondent(S):**

1. K.S.G. PADMAVATHI

**The Court made the following ORDER:**

The claim petitioner filed the above Civil Revision Petition, assailing the order, dated 29.01.2024, passed in E.A.No.51 of 2022 in E.A.No.14 of 2020 in E.P.No.4 of 2017 in O.S.No.629 of 2004 on the file of the IV Additional Civil Judge (Senior Division) Visakhapatnam.

2. Respondent No.1 herein, filed O.S.No.629 of 2004 on the file of IV Additional Senior Civil Judge against respondent No.2 for the recovery of an amount. The suit was decreed on 02.04.2007. Thereafter, respondent

No.1/decree holder filed E.P.No.4 of 2017 under Order XXI Rules 54, 64 and 66 of the Code of Civil Procedure, 1908 (C.P.C.) for attachment and sale of the schedule property for realization of the decretal amount. Pending the execution proceedings, the revision petitioner/claimant filed E.A.No.14 of 2020 under Order XXI Rule 58 read with Section 151 C.P.C., to declare that he is the absolute owner of the schedule property. E.A.No.14 of 2020 was dismissed for default on 29.07.2022.

3. Subsequently, the revision petitioner/claim petitioner filed an application under Order XIX Rule 1 C.P.C., which is numbered as E.A.No.51 of 2022, to set aside the ex parte order and to restore E.A.No.14 of 2020 on file.

4. In the affidavit filed in support of E.A.No.51 of 2022, it was pleaded that the revision petitioner submitted his affidavit in lieu of chief examination on 18.11.2020 and the matter was adjourned to 01.12.2020 for marking of documents. Due to Covid-19, physical courts were not functioning, and hence, the petitioner could not meet his counsel. Subsequently, the petitioner came to know through the family members of his counsel that the counsel died on 23.04.2021 due to Covid. He requested the family members of the counsel to hand over the case file. However, he could receive the file in the last week of September, 2022. Immediately, in the first week of October 2022, he handed over the record to the present counsel. The counsel on verification of the case status, in turn, informed him that the claim petition was dismissed for default on 29.07.2022, due to non taking steps.

(b) It was further contended that the counsel for the decree holder filed a memo on 21.12.2021 informing that the counsel for the judgment debtor and claim petitioner had died. Hence, the executing Court ordered the decree holder to issue notice to the judgment debtor as well as the claim petitioner. The notice

sent to the claim petitioner was sent in the name of B. Satyanarayana, father of the claim petitioner. The Amin returned the notice with an endorsement that the addressee died on 15.04.2012. Based on the endorsement, the Court, by order dated 02.03.2022, ordered steps. As no steps were taken, the claim petition was dismissed for default on 29.07.2022.

(c) Further pleaded that the claim petitioner/revision petitioner did not receive any notice from the Court, and the notice was sent to a dead person, who is not a party to the proceedings. The new counsel verified the record on 14.10.2022 and came to know that E.A.No.14 of 2020 was dismissed for default on 29.07.2022. Accordingly, the application to set aside the default order dated 29.07.2022 and restore E.A.No.14 of 2020, was filed on 29.10.2022 i.e. within thirty days from the date of knowledge.

5. Respondent No.1/decree holder filed a counter affidavit and contended, *inter alia*, that as per the orders of the Executing Court, he paid batta to issue notice to the claim petitioner. Thereafter, no steps were taken despite the conditional order, and hence, the claim petition was dismissed on 29.07.2022. The claim petitioner and the judgment debtor colluded with each other and created a registered settlement deed, dated 28.08.2017. No sufficient reasons were explained in the affidavit. Eventually, prayed to dismiss the petition.

6. No evidence was let in by either side in E.A.No.51 of 2022. The Court below dismissed the application on the sole ground that no separate application under Section 5 of the Limitation Act, 1963 (for short ‘the Act’) was filed to condone the delay.

7. Heard Sri S. Rajan, learned counsel for the revision petitioner, and Smt. K.S.G. Padmavathi, learned counsel for respondent No.1.

8. Learned counsel for the revision petitioner would submit that the application to set aside the default order was filed within thirty days from the date of the knowledge. However, the trial Court failed to consider the said aspect. He would further contend that since reasons were already explained in the affidavit, no separate application under Section 5 of the Limitation Act is necessary. Learned counsel relied upon a decision reported in **Kotak Mahindra Bank Limited v. Kew Precision Parts Private Limited and Others**[1]**.**

9. Per contra, learned counsel for respondent No.1 submitted that the revision petitioner and respondent No.2 colluded with each other. Respondent No.2/judgment debtor received a summons ordered by the Court, upon the death of her Advocate. As seen from the cause title, the petitioner and judgment debtor are residing in the same house, and the revision petitioner is aware of the Court proceedings. The revision petitioner failed to assign proper reasons.

10. The following point arises for consideration :

1. **Whether a separate petition under Section 5 of the Limitation Act is necessary, when the affidavit filed in support of a petition to set aside a default order contains all reasons, including the reasons to condone the delay**

2. **Whether the order, dated 29.01.2024 passed in E.A.No.51 of 2022 in E.A.No.14 of 2020 in E.P.No.4 of 2017, by the Executing Court, suffers from any illegality?**

[1] (2022) 9 SCC 364

11. The suit filed by respondent No.1 against respondent No.2, for the recovery of the amount was decreed on 02.04.2007. Thereafter, respondent No.1/decree holder filed E.P.No.4 of 2017 under Order XXI Rules 54, 64 and 66 of the Code of Civil Procedure, 1908 (C.P.C.), seeking attachment and sale of the schedule property to realise the decretal amount.

12. Pending the execution proceedings, the revision petitioner/claim petitioner filed E.A.No.14 of 2020 under Order XXI Rule 58 read with Section 151 C.P.C., to declare that he is the absolute owner of the schedule property. E.A.No.14 of 2020 was dismissed for default on 29.07.2022.

13. As already stated supra, after the death of the learned counsel for the revision petitioner/claim petitioner and respondent No.2 / judgment debtor No.2 during covid-19, the counsel for the decree holder filed a memo on 21.01.2021, pursuant to which the Executing Court ordered notice to the judgment debtor as well as the claim petitioner. However, the notice sent to the claim petitioner was returned with an endorsement that the addressee died on 15.04.2012. Acting on the said memo, the executing court ordered steps and, due to non-compliance with the order, dismissed E.A.No.14 of 2020 for default.

14. It is pertinent to mention here that the claim petition itself was filed in the year, 2020, whereas in the report of Amin, it is mentioned that the claim petitioner died on 15.04.2012. The executing court, in the considered opinion of this court, without verifying the record, concluded that the claim petition died and hence ordered further steps. Unless the claim petitioner dies pending the petition, ordering steps does not arise. However, steps were ordered due to the endorsement of Amin that the claim petitioner died on 15.04.2012, and the alleged failure resulted in the dismissal of the claim petition on 29.07.2022.

15. Coming to the aspect of delay caused in filing the application to set aside the default order, the petitioner, in the affidavit, stated that he could get the file from the family members of the previous counsel/ deceased counsel in the last week of September 2022 and handed over the case filed to the present counsel in the first week of October, 2022. The present counsel, on verification of the record, on 14.10.2022, the date of hearing, came to know that E.A.No.14 of 2020 was dismissed for default on 29.07.2022. Immediately thereafter, an application to set aside the default order was filed on 29.10.2022, within thirty days from the date of knowledge.

16. Section 5 of the Limitation Act would apply to the execution proceedings in view of the Andhra Pradesh State amendment made by incorporating sub-rule 4 to 106 of Order XXI CPC. Rule 106(3) envisages the application to be filed in case of dismissal of an application and also setting a party ex parte in terms of Section 105 of Order XXI CPC. As per Rule 106(3), an application may be filed within thirty days from the date of knowledge of the order.

17. In the case at hand, the petitioner pleaded the date of knowledge on 14.10.2022 and the application under Order XIX Rule 1 C.P.C., to set aside the ex parte order and to restore E.A.No.14 of 2020 on file, was filed on 27.10.2022, within thirty days from the date of knowledge. The revision petitioner received the record from the family members of the deceased Advocate in the first week of October, 2022. Even if the date of knowledge is taken from the first week of October, 2022, the application is filed within thirty days.

18. In the decision reported in **Damodaran Pillai v. South India Bank Limited**[2] relied upon by the trial Court, the applicant therein was represented by an advocate, and hence, the court presumed the knowledge of the order through his counsel. In that context, the Court observed that the date when the decree holder got the knowledge of dismissal of the execution petition was wholly irrelevant.

19. However, in the case at hand, as per the affidavit, the revision petitioner got the knowledge of the dismissal order through his new counsel on 14.10.2022 and immediately made an application on 27.10.2024. Therefore, the facts of the above decision do not apply to the present case.

20. Regarding the first point framed above, the answer to the said point is no longer *res integra***.** In **M.A. Qader vs. Md.Azmat Ali**[3], a division bench of the composite high court, while ordering a reference at para 10 observed as follows:

> 10) The matter can be viewed from another angle. Section 5 of Limitation Act enables the Court to admit an appeal or an application after the prescribed period if it is satisfied that there was sufficient cause for not preferring the appeal or application within such period. In the present case, I. A. No. 827 of 1983 was filed after the period of limitation. But it was averred in the affidavit filed in support of the petition that the summons have not been duly served and as such, the respondent was not present when the case was posted for hearing and that he came to know of the exparte

[2] 2005 (7) SCC 300
[3] 1988 (1) ALT 783

decree only when Page 6 of 8 possession was taken in execution. The court went into the matter and found that the summons were not duly served. Non-service of the summons was the reason both for the absence of the party on the date when the ex parte decree was passed and also for not preferring the application to set aside the ex-parte decree within the specified time. Where the grounds for both the reliefs are the same, it is not necessary that the separate application should be filed to condone the delay. The power is vested in the Court and the satisfaction is that of the Court. If there is sufficient material before the Court from which such satisfaction can be arrived at, the Court can admit the petition even after the period of limitation. Section 5 of Limitation act does not in terms say that a separate application should be filed. For the instance, in the present case an affidavit was filed to set aside the ex-parte decree stating that he came to know of ex-parte the order only at the time of execution and he was not present on the date when the case was posted for hearing. That material was there before the Court. The argument of learned counsel is that even if the material was there, he should have filed a separate petition to condone the delay in filing the restoration petition. We think that the above submission is hypertechnical in nature and in view of the provisions of section 5 of Limitation Act all that is necessary is that the court must be satisfied on the material on record before admitting any application or appeal which is filed beyond the period of limitation. Viewed in this angle also, the order is clearly sustainable.

21. In **Bhagmal v. Kunwar Lal**[4]**,** the Hon'ble Apex Court held as under:

> 12. … The appellant-defendants had clearly pleaded that they did not earlier come to the court on account of the fact that they did not know about the order passed by the court proceeding ex parte and also the ex parte decree which was passed. It was further clearly pleaded that they came to know about the decree when they were served with the execution notice. This was nothing, but a justification made by the appellant-defendants for making Order 9 Rule 13 application at the time when it was actually made. This was also a valid explanation of the delay. The question of filing Order 9 Rule 13 application was, in our opinion, rightly considered by the appellate court on merits and the appellate court was absolutely right in coming to the conclusion that the appellant-defendants were fully justified in filing the application under Order 9 Rule 13 CPC at the time when they actually filed it and the delay in filing the application was also fully explained on account of the fact that they never knew about the decree and the orders starting the ex parte proceedings against them. If this was so, the Court had actually considered the reasons for the delay also. Under such circumstances, the High Court should not have taken the hypertechnical view that no separate application was filed under Section 5.
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> **13.** The application under Order 9 Rule 13 CPC itself had all the ingredients of the application for condonation of delay in making that application. Procedure is after all handmaid of justice. Here was a party which bona fide believed the assurance given in the compromise panchnama that Respondent 1-plaintiff would get his

[4] (2010) 12 SCC 159; 2010 SCC OnLine SC 794

> suit withdrawn or dismissed. The said compromise panchnama was made before the elders of the village. Writing was also effected, displaying that compromise. The witnesses were also examined. Under such circumstances, the non-attendance of the appellant-defendants, which was proved in the further proceedings, was quite justifiable. The appellant-defendants, when ultimately came to know about the decree, had moved the application within 30 days. In our opinion that was sufficient.

22. The Apex Court in ***Kotak Mahindra Bank's*** case (referred supra) discussed regarding filing a separate application under Section 5 of the Limitation Act and observed as under at para 53:

> **53.** Section 5 of the Limitation Act, 1963 does not speak of any application. The section enables the court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. A court/tribunal may exercise its discretion to condone delay, even in the absence of a formal application.

23. In this case, at hand, the revision petitioner explained proper reasons in the affidavit, and further asserted knowledge of the order in the last week of September, 2022 and filed I.A. in third week of October, 2022 within 30 days from the date of knowledge. No separate application, in the facts, is needed since the proper reasons were assigned, and I.A. was filed within 30 days of knowledge. The executing Court failed to consider this aspect.

24. Since the executing court failed to exercise the jurisdiction vested with it, it resulted in irreparable injury to the petitioner. Given the discussion supra, the order passed in E.A.No.51 of 2022 brooks the interference of this Court.

25. Hence, this Civil Revision Petition is allowed. The order, dated 29.01.2024, passed in E.A.No.51 of 2022, in E.A.No.14 of 2020, in E.P.No.4 of 2017 in O.S.No.629 of 2004 on the file of the IV Additional Civil Judge (Senior Division) Visakhapatnam is set aside. Consequently, E.A. 14 of 2020 is restored. The executing court shall complete the enquiry as expeditiously as possible, strictly as per the law. No costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

**JUSTICE SUBBA REDDY SATTI**

Date : 30.06.2026
ikn

**Whether the order is :**

Speaking Yes/No / Recorded Yes/No

Reportable Yes/No / Non-Reportable Yes/No

**THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI**

**CIVIL REVISION PETITION NO: 934 of 2024**

Date : 30.06.2026
ikn