B.S. Sheshagiri Setty & Ors. Etc vs State Of Karnataka & Ors. Etc on 15 October, 2015

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Bench: V. Gopala Gowda, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.8663-8664 OF 2015
(Arising Out of SLP (C) Nos.10802-10803 of 2013)

B.S. SHESHAGIRI SETTY & ORS. .....APPELLANTS

Vs.

STATE OF KARNATAKA & ORS. .....RESPONDENTS

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted in the Special Leave Petitions.

The present appeals arise out of the impugned judgment and order dated 02.07.2012 passed in Writ Appeal Nos. 411 of 2006 and 410 of 2006 by the High Court of Karnataka at Bangalore, whereby the High Court dismissed the appeals filed by the appellants, thereby upholding the judgment and order of the learned single judge passed in Writ Petition Nos. 22453 of 2004 and 17054 of 2004, setting aside order dated 9.2.2004 passed in the Revision Petition No. CMW 33 CAP 98 by the Minister of Cooperation on the ground that the Revision Petition filed by the appellants herein is barred by limitation and is contrary to the provisions of Section 108 of the Karnataka Cooperative Societies Act, 1959 (hereinafter "KCS Act").

Though the case has a chequered history, we refer to the facts in brief hereunder, which are required to appreciate the rival legal contentions urged on behalf of the parties:-

> The appellants are small farmers who had availed a loan of Rs.16,000/- from the Kadur Taluk Primary Co-Operative Land Development Bank Ltd. (hereinafter the "Bank") by mortgaging their entire immoveable agricultural property as security for

the same. These lands were situated at Sakkarepatna village of Kadur Taluk, Chikmagalur, descriptions of which are stated hereunder in survey numbers and their measurements:

Admittedly, the appellants initially were able to pay only one instalment of the loan, and were not able to pay the subsequent instalments. The respondent Bank filed a petition before the Arbitrator of Co-Operative Societies, Chikmagalur District, which was registered as a case in Dispute D.T.C 75/1974-1975. The learned Arbitrator, passed an ex parte award in favour of the Bank by his order dated 31.05.1975, holding as under:

".....it is hereby declared that the amount due to the petitioner on account of principal and interest and costs calculated upto 11th day of April 1975 is Rs 20.637-23 and that such amount shall carry interest at 12 per cent per annum from the said date viz. 11.4.1975, until realization and it is hereby ordered that the said amount shall be recovered by sale of the schedule mortgaged properties or a sufficient part thereof and if the amount fell due with interest and costs is not realized by the said sale, the balance shall be recovered from the respondents personally. The said sum may also be recovered from the sale of the moveable properties of the respondents." On 27.05.1981, the bank conducted the auction sale of the immoveable property in public auctions and the bid stood at Rs.40,050/-. Being aggrieved of the award of the Arbitrator as well as the sale of the property, the appellants filed an appeal before the Karnataka Appellate Tribunal, Bangalore. During the pendency of the appeal, the State Government of Karnataka issued a notification in respect of the borrowers of the Bank, which, inter alia, stated as under:

".....It is hereby informed to the loan members of Kadur Taluk Primary Cooperative Land Development Bank that as per the Government order, those members who have the balance by the end of June 1982 and special discount is given for the year 1982-83:

On 30.06.82 those who had the balance (applicable to the suit decreed loans also) if the principal amount is paid in a single payment before 30.6.1983 interest and compound interest will be completely exempted....." Pursuant to this offer, the appellant paid to the Bank the entire remaining loan amount of Rs.7050/- on 30.06.1983, excluding the interest as he had already deposited an amount of Rs.9,000/- with the Karnataka Cooperative Society on 07.09.1981.

The learned Karnataka Appellate Tribunal allowed the appeal filed by the appellants vide order dated 27.12.1983, and remitted the matter back to the Arbitrator, to dispose of the same in accordance with law after giving proper notice to all the parties. Challenging the said order of the Tribunal, the respondents filed a Writ Petition before the High Court of Karnataka, which was allowed by its judgment and order dated 29.11.1985. The learned High Court held on the issue of the appeal before the Tribunal being barred by limitation as under:

"While respondent-4 had filed his appeal- appeal No. 431 of 1981- after six years. Every one of the reasons on which those respondents sought of condonation of delay in filing their reading of the applications should have rejected that respondents 5 and 6 had not been served, had condoned the delay in filing the appeal. Assuming that reason opinion, particularly having regard to the fact that they were not other than the sons of respondent-4, who had appeared before the Arbitrator and had consented for a decree sought by the society. I am somewhat distressed at the way the Tribunal has dealt with the appeals and has condoned the inordinate and inexplicable delay in filing the appeals. On the principles of regulating the condonation of delay, the Tribunal should have rejected their appeals also in limine. From this it follows that the order of the Tribunal, which suffers from manifest illegalities in exercise of its jurisdiction is liable to be quashed." On the issue of the order of the Arbitrator being passed ex parte against the respondents therein, the High Court held as under:

"An award/ decree made against a person, though he was not served in the proceedings, is never considered as a decree made without jurisdiction. A decree or an award against a person who has not been served at the highest may be an irregularity and does not amount to a case of inherent want of jurisdiction nullifying such a decree on that ground. Without any doubt, the view taken by the Tribunal that the award made by the arbitrator in 1975 to which respondent-4 consented was a valid award and there was hardly any ground for the Tribunal to take exception to the same after six years in the case of one appeal and after 7 years in the case of another appeal." Setting aside the order of the Tribunal, the High Court held: "On any view of the matter, the order of the Tribunal which suffers from errors of jurisdiction and illegality in the exercise of jurisdiction, had occasioned grave failures of justice to the petitioner and respondents-7 and has done doubtful justice to respondents 4 to 6 is liable to be interfered with by me under Articles 226 and 227 of the Constitution." The Writ Appeal preferred by the appellants against the order of the High Court dated 29.11.1985 was dismissed by the Division Bench of the High Court vide judgment and order dated 01.03.1990. While upholding the findings of the learned single judge of the High Court, the Division Bench held as under:

"In addition to this, we have already noticed from the order sheet of the Arbitrator produced as Annexure-C that the notices were issued to the appellants and the service of summons on them was held as sufficient and the appellants were treated as ex parte. That being so, the observation of the Tribunal that the notices were not served upon the appellants is incorrect. In addition to this the Tribunal has failed to see that the 5th respondent appeared and consented for a decree. The appellants and the 5th respondent were living together under one roof. Hence it is difficult to believe the version of the appellants that they were not aware of the award. All that can be said in the instant case is that the explanation as to the ignorance of the award proceedings is opposed to the realities of life." In the meanwhile, on 10.12.1985, the Assistant Registrar of Cooperative Societies issued a certificate of sale under Rule 38(7) of the Karnataka Cooperative Societies Rules, 1960 (hereinafter "KCS Rules")

in favour of the auction purchaser S.V. Vijaydev (respondent no.6 herein), thereby confirming the sale of the lands of the appellants herein. Aggrieved of the same, the appellants preferred an appeal under Section 106 of the KCS Act before the Deputy Registrar of the Cooperative Societies, Chikmagalur District. The appeal was dismissed by the Deputy Registrar vide order dated 09.05.1986. While dismissing the appeal, the learned Deputy Registrar held as under:

"The appellants have contended that the action of the Assistant Registrar of Cooperative Societies, is contrary to law, but they have not specifically mentioned or proved as to how the confirmation of sale is in violation of the K.C.S Act or contrary to Rule 38 of the K.C.S Act and the Rules. Therefore the order of confirmation of sale passed by the Assistant Registrar of Cooperative Societies is upheld and the appeal is dismissed." The appellants then filed a Review Petition under Rule 38(5)(a) of the KCS Rules, challenging the order of confirmation of sale of the immoveable property passed by the Assistant Registrar of Co-Operative Societies dated 10.12.1985, which petition was dismissed as not maintainable vide order dated 17.08.1996, on the ground that an appeal filed challenging the same had already been dismissed. Aggrieved of the same, the appellants then preferred a Revision Petition under Section 108 of the KCS Act, before the Deputy Registrar of Co-operative Societies which was dismissed as not maintainable, vide order dated 22.05.1997. The Deputy Registrar held as under:

"This Court has no jurisdiction to entertain the Revision Petition filed by the Petitioner under Section 108 of the Cooperative Societies Act, 1959. I am of the opinion that the Revision Petition is liable to be dismissed as not maintainable at the preliminary stage of admission." The appellants thereafter filed a Revision Petition under Section 108 of the KCS Act before the Minister of Co-operation, Government of Karnataka. By order dated 09.02.2004, the Minister of Cooperation allowed the Revision Petition filed by the appellants and set aside the order of Sale confirmation dated 10.12.1985, as well as the orders of appeal dated 09.05.1986 and order of Review dated 17.08.1996. It was held by the Minister as under:

"....I am of the opinion that the matter has not been dealt with in a just manner by the appellate authority. The subsequent action of the petitioners in filing appeals before the JRCS have all been exercised in futility because the matter was not given thought on merits all along by the authorities. If it was the claim of the petitioners that they have managed to repay a substantial part of the loan i.e the principal amount before the specified date as in the circular dated 02.03.1984 and that therefore they have complied with the condition as laid out in the circular, it must have been the duty of the appellate authorities to examine the said contentions and then decide the matter keeping in mind the conditions of the said circular. The issue to be decided here is whether the petitioners claim to the interest waiver and consequent benefits are reasonable and tenable.

> ...It is seen that the amount of loan overdue is not really huge. Yet the Sale officer thought it fit to auction 1 acre and 07 guntas of land to recover a sum of Rs 20, 367/- with interest. The sale was accepted for an offer of Rs 40,650/-.....
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> .....From the above arguments it is seen that the sale Officer, ARCS AND DRCS, all along have latched on to technical considerations and have not analysed the matter objectively. It appears that their approach has been rather narrow and such long drawn litigation could have been avoided, had the authorities thought in a more rational manner instead of going into avoidable technicalities. I am of the opinion that the DRCS should have examined the facts and circumstances of the auction sale in the appeals before him and decide the matter. Available facts indicate that such an effort was not made and the matter went into litigation for years. While I am aware the auction sale was held in 1981, it is unfortunate that not enough efforts have been made by the authorities to see the case at hand in an objective manner and the facts have not been analysed with respect to the benefit of interest waiver ordered by the State Government that was intended to reach the needy farmer. In my opinion, the conditions of loan default that prevailed then, with these petitioners were surely coming within the ambit of the conditions stipulated in the circular dated 02.03.1984 which is based on a government order it would be appropriate to make all efforts to see that such a benefit reached the persons to whom it was intended to reach in the first place....." (emphasis laid by this Court) The auction purchaser (respondent no. 6 herein) challenged the aforementioned order of Minister of Cooperation dated 09.02.2004 passed in the Revision Petition, by way of filing Writ Petition No. 17054 of 2004 before the High Court of Karnataka. The State Government of Karnataka also challenged the order by way of filing Writ Petition No. 22453 of 2004. The learned single judge by a common judgment and order dated 24.01.2008 quashed the order of the Minister dated 09.02.2004. The learned judge held that the order passed in the Revision Petition was perverse and arbitrary.

It was further held that the benefit of the circular dated 02.03.1984 was only for the exemption of the interest, and that the same would not enable the government to set aside the auction of the land which was conducted and confirmed in December, 1985. It was further held by the learned single judge that in any case, the said circular was not at all applicable when the property was transferred to a third party. The appellants preferred Writ Appeal No.411 of 2006 c/w Writ Appeal No. 410 of 2006 questioning the correctness of the order dated 24.1.2008 passed in Writ Petition No. 17054 of 2004 etc. The High Court dismissed the appeals, and held that the Revision Petition filed before the Minister under Section 108 was barred by time. The learned High Court held as under:

> "From a reading of the provisions of Section 108, it is clear that suo moto, the Government, may at anytime exercise the power of revisions or if it is at the instance of the party, within six months. In the instant case, the revision petition was filed by the appellants. Therefore, the appellants were required to file a revision petition within six months from the date of confirmation of the same, since the sale is confirmed in 1985. The appellants could not have filed a revision in 1998, 13 years

after the orders of confirmation. Even if it is held that suo moto at any time, the Government can exercise the powers of revision, then also, it has to be exercised within a reasonable time not beyond a period of three years....

Viewed from any angle, the revision petition allowed by the Hon'ble Minister was clearly barred by time and the same is contrary to Section 108 of the Act." The Division Bench of the High Court held that no ground for interfering with the order of the single judge is made out and the appeals were dismissed. Hence, the present appeals.

We have heard the learned counsel for both the parties. On the basis of the factual evidence on record produced before us, the circumstances of the case and also in the light of the rival legal contentions urged by the learned counsel for both the parties, we have broadly framed the following points which require our attention and consideration:-

Whether the Revision Petition filed before the Minister for Co-Operation is barred by time in light of the provisions of Section 108 of the Karnataka Cooperative Societies Act, 1959?

Whether the interest of the auction purchaser is protected on grounds that he is a bona fide third party?

What order?

The litigation in this case has been quite lengthy, which has seen multiple hearings before multiple forums. The controversy arose in the case when the learned Arbitrator passed the ex-parte order dated 31.5.1975 against the appellants. The Karnataka Appellate Tribunal set aside the same vide order dated 27.12.1983. The Karnataka High Court in Writ Petition No. 6642 of 1984 set aside the order of the Karnataka Appellate Tribunal by its judgment and order dated 29.11.1985. On the basis of the judgment in the above mentioned Writ Petition, the respondent Bank confirmed the sale of the land of the appellants vide certificate dated 10.12.1985. The appeal filed against the confirmation of sale was rejected by the Deputy Registrar of Cooperative Societies vide order dated 09.05.1986. A Revision Petition was then filed before the wrong forum, which was rejected. Then a Revision Petition under Section 108 of the KCS Act was filed before the Minister for Cooperation, State Government of Karnataka. The Minister allowed the Revision Petition and set aside the confirmation of the sale of the land of the appellants in favour of the auction purchaser. The said order of the Minister was set aside by the learned High Court. To appreciate the controversy in the instant case, it is imperative for us to examine the provisions of the KCS Act.

The KCS Act (Karnataka Act No. 11 of 1959) was enacted with the aim of providing a uniform co-operative societies law as applicable to the whole of the State of Karnataka. The Rural Development Banks are conferred the power to advance loans, in terms of Section 82-A of the KCS Act, which reads as under:

"82A. Powers of Land Development Banks to advance loans and to hold lands.

- Subject to the provisions of this Act and the rules made thereunder, it shall be competent for the Agriculture and Rural Development Banks to advance loans for the purposes referred to in section 76A, and to hold lands the possession of which is transferred to them under the provisions of this Chapter." Chapter XII of the KCS Act pertains to Execution of Awards, Decrees, Orders and Decisions. Section 99 of the KCS Act deals with Enforcement of charge as under:

"99. Enforcement of charge.- Notwithstanding anything contained in Chapter IX, or any other law for the time being in force, but without prejudice to any other mode of recovery provided in this Act, the Registrar or any person subordinate to him empowered by the Registrar in this behalf, may, on the application of a cooperative society, make an order directing the payment of any debt or outstanding demand due to the society by any member or past or deceased member, by sale of the property which is subject to a charge under sub-section (1) of section 32" Chapter XIII of the KCS Act pertains to Appeals, Review and Revision. Section 105 of the KCS Act provides for appeals to the Tribunal: "105. Appeals to the Tribunal.- Any person aggrieved by,— .....

(c) any award of an Arbitrator under clause (c) of sub-section (1) of section 71;

..... may, within sixty days from the date of the decision, award or order, as the case may be, appeal to the Tribunal." Section 108 of the KCS Act confers powers of revision on the State Government as under:

"108. Powers of revision of State Government.- [Subject to the provisions of section 108A, the State Government] suo motu at any time, and, on application of any person aggrieved, within a period of six months from the date of any order, may call for and examine the record of any case or proceedings of any officer subordinate to it except those subject to appeal or revision by the Tribunal or those in respect of which an appeal has been made to the State Government under section 106, and the State Government after such enquiry as it deems fit is satisfied that the order of the officer is contrary to law and has resulted in a miscarriage of justice, pass such orders thereon as the State Government deems just:

Provided that no order shall be made to the prejudice of any person under this section unless he has been given a reasonable opportunity of being heard." (emphasis laid by this Court) Since Section 108 is at the heart of the controversy in the instant

case, it is important to examine it in close detail. It confers upon the State Government the power of suo motu revising the order of the Tribunal. It is pertinent to note that no time limit has been set for the same. The provision confers the power upon the State Government in case the order of the Tribunal is contrary to law and has resulted in miscarriage of justice. Mr. S.N Bhat, the learned counsel appearing on behalf of respondent no. 6, the auction purchaser vehemently contends that the limitation period prescribed for filing revision petition by the Appellants under Section 108 of the Act is six months. It is further contended that in the instant case the petition was unduly delayed, and that the appellants had not even filed an application for condonation of delay before the Minister. The learned counsel further placed reliance upon the judgment and order of the learned single judge of the Karnataka High Court in Writ Petition No. 17054 of 2004 c/w Writ Petition No. 22453 of 2004, wherein the order of the Minister in the Revision Petition was set aside. The learned judge had observed as under:

".....It is clear from the perusal of the order passed by the first respondent that no suo motu power has been exercised and order has been passed in the basis of the revision filed by respondents 2 to 4 and the said revision has not been filed within six months....." The learned counsel has placed reliance upon the decision of this Court in V.N Shrikhande (Dr.) v. Anita Sena Fernandes[1] to contend that a statutory authority has no jurisdiction to entertain a petition beyond the period prescribed for presenting the petition unless an application for condonation of delay is filed. The learned counsel further contends that even in cases where no limitation period has been prescribed for exercising the revision power, it must be exercised within a reasonable period of time. The learned counsel places reliance upon the cases of State of Gujarat v. Patil Raghav Natha & Ors[2] and Santoshkumar Shivgonda Patil & Ors. v. Balasaheb Tukaram Shevale & Ors.[3] The learned counsel appearing on behalf of the appellants, Mr. H. Chandra Shekhar, on the other hand, contends that the High Court erred in setting aside the order of the Minister of Co-operation, Government of Karnataka in the Revision Petition on the ground that it was barred by limitation. The learned counsel places reliance upon the case of Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors.[4], wherein this Court has laid down the following principles to be applied while condoning delay :

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

> 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
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> 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
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> 6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so." The learned counsel appearing on behalf of the appellants further contends that Section 108 of the KCS Act empowers the state government to examine the legality of the order under revision and also to prevent miscarriage of justice. The scope of revisional jurisdiction depends on the language of the statute providing revision.

We have heard the learned counsel for both the parties. We are unable to agree with the contentions advanced by the learned counsel appearing on behalf of respondent no. 6. This case is a classic example to demonstrate the gross miscarriage of justice that occurs when the principles of natural justice are ignored for technical considerations. The appellants in the present case are poor farmers, who have been made to litigate for nearly three decades for their land, which was their only source of income and livelihood, which right is guaranteed to them under Article 21 of the Constitution of India. The award of the Arbitrator dated 31.05.1975 was passed ex parte against the appellants. The circular dated 02.03.1984 issued by the Karnataka State Cooperative Land Development Bank on the basis of the government order, stated that the farmers who had become defaulters as on 30.06.1982 to the Taluk Co-operative Land Development Banks in the State, and continued being defaulters upto 30.06.1983 could repay the principal amount to such Banks, then in such cases, the State Government would bear the burden of the entire portion of the interest on such loans on behalf of the farmers and reimburse the same to such respective Banks. As is evident from the letter 'Annexure P3', the appellants had repaid the entire principal amount within the date specified in the circular, which fact has not been contested by the respondents. The Auction sale of the property in question was conducted on 27.05.1981, and the confirmation of the sale was ordered on 10.12.1985 without considering the relevant fact of repayment of principal amount due to the Bank within the time stipulated in the notification issued by the Bank referred to supra. The appellants had informed the Bank regarding the repayment of loan on 29.06.1983. The appellate authority has not considered the claim of the appellants on merit. The High Court of Karnataka in Writ Petition No. 6642 of 1984 set aside the order of the Karnataka Appellate Tribunal dated 27.12.1983 on the ground that the appeal before the Tribunal was barred by limitation. The Writ Appeals filed by the appellants were also dismissed. The confirmation of sale of the property in question was done on the basis of the order in the above mentioned Writ Petition. The same was challenged by the appellants before the Deputy Registrar of Co-operative Societies, who dismissed it on the ground that the appellants have not proved how the confirmation of sale is contrary to the provisions of the KCS Act, despite the fact of the repayment of the loan amount to the Bank being brought to his notice. The order of the Minister of Co-operation, Government of Karnataka in the Revision Petition setting

aside the confirmation of sale was set aside by the learned single judge of the Karnataka High Court on the ground that it was barred by limitation. The same was upheld by the Division Bench in the Writ Appeals.

The reliance placed by the learned counsel for the respondents on the case of V.N Shrikhande referred to supra is misplaced, as that case pertained to the Consumer Protection Act, 1986 and the powers of the District Consumer Forums therein. Section 24A of the Consumer Protection Act, 1986 provides a limitation period of two years for filing a complaint, and the proviso expressly bars the National Commission from entertaining delayed complaints unless reasons for condonation of delay are provided. The learned counsel placed reliance on the following paragraph of the said judgment:

> "15. Section 24A(1) contains a negative legislative mandate against admission of a complaint which has been filed after 2 years from the date of accrual of cause of action. In other words, the consumer forums do not have the jurisdiction to entertain a complaint if the same is not filed within 2 years from the date on which the cause of action has arisen. This power is required to be exercised after giving opportunity of hearing to the complainant, who can seek condonation of delay under Section 24A(2) by showing that there was sufficient cause for not filing the complaint within the period prescribed under Section 24A(1). If the complaint is per se barred by time and the complainant does not seek condonation of delay under Section 24A(2), the consumer forums will have no option but to dismiss the same....." The learned counsel on behalf of respondent no.6 contends that statutory authorities in general do not have the right to condone delay without an application for condonation of delay, whereas it is clear that the said judgment was to apply only to consumer forums, and the same has no application to the facts of the instant case. The reliance placed by the learned counsel on the case of Santoshkumar Patil referred to supra is also misplaced. It was observed in that case as under:
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> "It seems to be fairly settled that if a statue does not prescribe the time limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein." (emphasis laid by this Court) If a statute does not prescribe the time limit for exercise of revisional power, it must be exercised within a reasonable time frame. In the instant case, it is evident that constant litigation has been carried on by the appellants, and therefore they cannot be accused of suddenly waking up after 13 years to claim their land. Further, in the context of limitation, it has been held by this Court in a catena of cases that when what is at stake is justice, then a technical or pedantic approach should not be adopted by the Courts to do justice when there is miscarriage of justice caused to a public litigant. A three judge bench of this Court in the case of State of Haryana v. Chandra Mani & Ors.[5] has held as under :

"The doctrine must be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so." More recently, a two judge bench of this Court observed in the case of Dhiraj Singh (Dead) through L.Rs. v. State of Haryana & Ors.[6] as under : "15...The substantive rights of the appellants should not be allowed to be defeated on technical grounds by taking hyper technical view of self-imposed limitations....." Further, Section 108 of the KCS Act confers the power on the State Government to pass any order as it may deem fit in case there has been a miscarriage of justice. The instant case falls squarely within the ambit of Section 108 of the KCS Act. The appellants have been rendered landless for more than two decades even after repaying the loan amount. If this does not amount to gross miscarriage of justice caused to the appellants, we do not know what does.

In the instant case, the fact of repayment of the principal loan amount to the Bank before the confirmation of the auction sale, shows that confirmation of the auction of the immoveable property was grossly illegal. The said sale was in contravention of the notification issued by the State Government of Karnataka in respect of the borrowers of the Bank, which sought to waive off the interest on the principal amount if the same was paid by 30.06.1983. The said notification was issued on the basis of a government order, traceable to Article 162 of the Constitution of India. Therefore, we have recorded the finding that the sale of the property and the confirmation of the auction sale is contrary to the notification referred to supra and law and has resulted in a gross miscarriage of justice. The action of the sale officer has resulted in the deprivation of the right to livelihood of the appellants who are small landowners, guaranteed to them under Article 21 of the Constitution of India. The right to livelihood has been held to be an integral part of right to life, most notably in the landmark judgment of this Court rendered in the case of Olga Tellis v. Bombay Muncipal Corporation[7], wherein it has been held as under:

"32. .....An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable,

must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which people their desertion of their hearths and homes in the villages that struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood……" (emphasis laid by this Court) In the instant case, the deprivation of the land of the poor appellants resulted in the deprivation of their livelihood as well. The courts below in the instant case which dismissed the claim of the appellants on technical grounds grossly erred and we cannot uphold the same. The High Court has erred in setting aside the order of the Minister of Co-operation, Government of Karnataka passed in the Revision Petition on the ground that it was barred by limitation, which approach of the High Court is highly pedantic and technical and therefore the same cannot be allowed to sustain in law.

Further, Section 108 of the KCS Act confers the power of revision on the state government suo moto at any time, or on application by an applicant within 6 months of the passing of an order. The KCS Act is a special legislation. Thus, by virtue of Section 29(2) of the Limitation Act, 1963, the power to condone delay is available with the state government. The contention of the auction purchaser that no such application for condonation of delay of the belated revision petition has been filed by the appellants is a hyper technical one and cannot be sustained. Where the state government has exercised its statutory power under Section 108 of the KCS Act after satisfying itself that the sale of the mortgaged immoveable property of the appellants in the public auction is illegal, it is not open for the respondents to contest the same by urging technical grounds, especially in light of the fact that the power conferred upon the state government under Section 108 of the KCS Act is 'suo moto' and the same can be exercised 'at any time'. Therefore, having regard to the facts of the case, in the absence of an application for condonation of delay, we hold that the exercise of the power by the Minister for Co-operation, State Government of Karnataka must be taken as a suo moto exercise of power by him.

It was next contended by Mr. S.N. Bhat, the learned counsel appearing on behalf of respondent No.6 (the auction purchaser) that the interest of the auction purchaser should be protected, as he is a bona fide third party, who purchased the land at the auction. The learned counsel places reliance on the decision of this Court in the case of Janatha Textiles & Ors. v. Tax Recovery Officer & Anr[8], wherein this Court has held that the rights of a bona fide auction purchaser must be protected and that his title is saved even if the decree is set aside.

We are unable to agree with the above contention of the learned counsel on behalf of the auction purchaser. The auction purchaser, in our opinion, is not a bona fide

purchaser. Section 89 of the KCS Act sets down the procedure of sale, which provides as under:

"89. Power of sale when to be exercised.- (1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (Central Act IV of 1882), where a power of sale without the intervention of the court is expressly conferred on the [Agriculture and Rural Development Bank] by the mortgage deed, the committee of such Bank or any person authorized by such committee in this behalf shall, in case of default of payment of the mortgage money or any part thereof, have power, in addition to any other remedy available to the Bank, to bring the mortgaged property to sale without the intervention of the court.

(2) No such power shall be exercised unless and until,—

(a) the Board has previously authorized the exercise of the power conferred by sub-section (1), after hearing the objections, if any, of the mortgagor;

(b) notice in writing requiring payment of such mortgage money or part has been served upon,—

(i) the mortgagor;

(ii) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same;

(iii) any surety for the payment of the mortgage debt or any part thereof;

and

(iv) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property; and

(c) default has been made in payment of such mortgage money or part thereof for three months after such service." Thus, it is imperative that the notice of the sale to be served on the mortgagor, and the opportunity be given to him to file his objections. In the instant case, the award of the Arbitrator dated 31.05.1975 ordering the sale of land was passed ex parte and the appellants were not provided any opportunity to produce their defence and objections to the same. Further, it is an admitted factual position that the appellants had repaid the principal loan amount as on 30.06.1983 itself. The confirmation of the auction sale was ordered on 10.12.1985. It was upon the auction purchaser to assess the circumstances in which the auction of the property was being conducted. Rule 38 of the KCS Rules, 1960, which pertains to Attachment and Sale of Immoveable Property, provides as under:

"38. Attachment and Sale of Immoveable Property-

..... (2).....

(d) Proclamation of sale shall be published by affixing a notice in the office of the Recovery Officer and the taluka office at least thirty days before the date fixed for the sale land also by beat of drum in the village (on two consecutive days previous to the date of sale and on the day of sale prior to the commencement of the sale). Such proclamation shall, where attachment is required before sale, be made after the attachment has been effected. Notice shall also be given to the applicant and defaulter. The proclamation shall state the time and place of sale and specify as fairly and accurately as possible :--

the property to be sold, any encumbrance to which the property is liable;

the amount for the recovery of which sale is ordered and every other matter which the Sale Officer considers material for a purchaser to know in order to judge the nature and value of the property." Further, the fact that the actual auction sale had been conducted on 25.05.1981 will also not come to the rescue of the auction purchaser, as it has been held in the case of Velji Khimji and Co. v. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and Ors.[9] as under:-

"In the first case mentioned above i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority." (emphasis laid by this Court) The confirmation of the sale happened only on 10.12.1985, which was after the principal loan amount had been repaid by the appellants in compliance of the notification issued by the Bank. In light of the facts of the present case, the rights of the auction purchaser cannot be protected as he cannot be said to be a bona fide purchaser.

Answer to Point No.3 In view of the reasons mentioned supra, we are of the view that the confirmation of auction sale of the immoveable property in question was illegal. The learned High Court erred in setting aside the order dated 9.2.2004 of the Minister for Cooperation, State Government of Karnataka, passed in the Revision Petition. The same is erroneous and liable to be set aside. Accordingly, we pass the following order:

The Civil Appeals are allowed and set aside the impugned judgments and orders passed in the Writ Petitions and the Writ Appeals and restore the order dated 09.02.2004 passed by the Minister in the Revision Petition No. CMW 33 CAP 98 and further direct that respondent no.6-the auction purchaser shall re-deliver the possession of the immoveable property to the appellants sold in auction by the sale officer pursuant to the execution of an award dated 31.05.1975 passed against the

appellants and get back the sale consideration amount of Rs.40050/- from the respondent Bank within six weeks from the date of receipt of this order, failing which the respondent Nos.1 to 5 shall take coercive steps against the auction purchaser or any person claiming through him, with police help if required, and re-deliver the possession of the immoveable property to the appellants and submit compliance report before this Court. No costs of these proceedings are awarded.

... ... J . [T . S . T H A K U R] .....J. [V. GOPALA GOWDA] New Delhi, October 15, 2015 ITEM NO.1A-For Judgment COURT NO.11 SECTION IVA S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS C.A.Nos. 8663-8664/2015 arising from Petition(s) for Special Leave to Appeal (C) No(s). 10802-10803/2013 B.S. SHESHAGIRI SETTY & ORS. ETC. Petitioner(s) VERSUS STATE OF KARNATAKA & ORS. ETC. Respondent(s) Date : 15/10/2015 These matters were called on for pronouncement of JUDGMENT today.

For Petitioner(s) Mr. H. Chandra Sekhar,Adv.

For Respondent(s) Mr. V. N. Raghupathy,Adv.

Mr. S. N. Bhat,Adv.

Hon'ble Mr. Justice V. Gopala Gowda pronounced the judgment of the Bench comprising Hon'ble Mr. Justice T.S. Thakur and His Lordship.

Leave granted.

The appeals are allowed in terms of the signed reportable judgment. Pending application(s), if any, stand(s) disposed of.

(VINOD KR.JHA) COURT MASTER

(MALA KUMARI SHARMA) COURT MASTER

(Signed Reportable Judgment is placed on the file)

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[1] (2011) 1 SCC 53
[2] (1969) 2 SCC 187
[3] (2009) 9 SCC 352
[4] (1987)2 SCC 107
[5] (1996)3 SCC 132
[6] (2014) 14 SCC 127
[7] (1985) 3 SCC 545
[8] (2008) 12 SCC 582

[9] (2008) 9 SCC 299

552	1 Acre 07 Guntas
555	0 Acre 38 Guntas
556	0 Acre 14 Guntas
557	1 Acre 28 Guntas