

A MAJJI SANDEMMA @ SANYASIRAO

v.

REDDY SRIDEVI & ORS.

(Civil Appeal No. 7696 of 2021)

B DECEMBER 16, 2021

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

- Delay/Laches: Condonation of delay – Delay of 1011 days in preferring second appeal by respondents, condoned by High Court – Correctness of – Held: While condoning delay, High Court did not observe that any sufficient cause explaining the huge delay of 1011 days was made out – Averments in the application for condonation of delay showed that it was a case of a gross negligence and/or want of due diligence on the part of the respondents before the High Court in filing such a belated appeal – Delay thus remained unexplained – Discretion was not exercised judiciously by the High Court – Order of High Court quashed.*

Allowing the appeal, the Court

- HELD :** 1. The High Court observed that if the delay is condoned no prejudice will be caused to the appellant as the appeal would be heard on merits. The High Court also observed that there was no wilful negligence on the part of the respondents nor it suffered from want of due diligence. The averments in the application for condonation of delay showed that it was a case of a gross negligence and/or want of due diligence on the part of the respondents before the High Court in filing such a belated appeal. [Para 6.1][480-D-E]

2. In the application seeking condonation of delay it was stated that she is aged 45 years and was looking after the entire litigation and that she was suffering from health issues and she had fallen sick from 01.01.2017 to 15.03.2017 and she was advised to take bed rest for the said period. However, there is no explanation for the period after 15.03.2017. Thus, the period of delay from 15.03.2017 till the Second Appeal was filed in the year 2021 was not at all been explained. Therefore, the High Court did not exercise the discretion judiciously. [Para 6.2][480-F-H]

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Ramlal,Motilal and Chhotelal v. Rewa Coalfields Ltd. [1962] 2 SCR 762; *P.K.Ramachandran v. State of Kerala and Anr.* (1997) 7 SCC 556:[1997] 4 Suppl. SCR 204; *Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project* (2008) 17 SCC 448 : [2008] 15 SCR 135; *Basawaraj and Anr. v. Special Land Acquisition Officer.* (2013) 14 SCC 81 : [2013] 8 SCR 227 – relied on

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<u>Case Law Reference</u>		
[1962] 2 SCR 762	relied on	Para 3.4
[1997] 4 Suppl. SCR 204	relied on	Para 3.4
[2008] 15 SCR 135	relied on	Para 3.4
[2013] 8 SCR 227	relied on	Para 3.4

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7696 of 2021.

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From the Judgment and Order dated 16.09.2021 of the High Court for the State of Andhra Pradesh at Amaravathi in I.A. No.1 of 2021 in S.A. No.331 of 2021.

Y. Raja Gopala Rao, K. Pramod Kumar, D. Gopi Krishna, Advs. for the Appellant.

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Siddhartha Srivastava, Adv. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

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1. Feeling aggrieved and dissatisfied with the impugned order dated 16.09.2021 passed by the High Court of Andhra Pradesh at Amaravati in I.A. No.1 of 2021 in Second Appeal No.331 of 2021 by which the High Court has condoned a huge delay of 1011 days in preferring the Second Appeal, the appellant - original plaintiff – respondent before the High Court, has preferred the present appeal.

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2. That the appellant herein – original plaintiff filed a civil suit being O.S. No. 40 of 2013 for permanent injunction against the respondents herein – original defendants. That the Trial Court dismissed the said suit by judgment and decree dated 23.04.2016. That the First

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- A Appellate Court allowed the suit by quashing and setting aside the judgment and decree passed by the Trial Court, by judgment and decree dated 01.02.2017. That the original defendants – respondents herein applied for the certified copy of the judgment and order on 04.02.2017. The same was ready for delivery on 10.03.2017. That after a period of approximately 1011 days, the respondents herein – original defendants preferred the Second Appeal before the High Court. Application to condone the delay was also filed being I.A. No.1 of 2021. By the impugned order, the High Court has condoned the delay of 1011 days in preferring the Second Appeal, which is the subject matter of appeal before this Court.
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- C 3. Learned counsel appearing on behalf of the appellant herein – original plaintiff has vehemently submitted that in the present case, High Court has committed a grave error in condoning huge delay of 1011 days in preferring the appeal.
 - D 3.1 It is submitted that as such no sufficient cause was shown by the respondents herein - appellants before the High Court, explaining the huge delay of 1011 days in preferring the Second Appeal.
 - E 3.2 It is further submitted that even while condoning the huge delay of 1011 days, the High Court has also not observed that sufficient cause has been shown explaining the delay of 1011 days in preferring the Second Appeal.
 - F 3.3 It is further submitted that even considering the averments in the application for condonation of delay, there is no explanation whatsoever explaining the delay for the period after 15.03.2017 till June, 2021 - till the Second Appeal was preferred.
 - G 3.4 Making the above submissions and relying upon the decisions of this Court in the cases of **Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.**, (1962) 2 SCR 762; **P.K. Ramachandran Vs. State of Kerala and Anr.**, (1997) 7 SCC 556 as well as the decision in the cases of **Pundlik Jalam Patil Vs. Executive Engineer, Jalgaon Medium Project**, (2008) 17 SCC 448 and **Basawaraj and Anr. Vs. Special Land Acquisition Officer**, (2013) 14 SCC 81, it is prayed to allow the present appeal.
 - H 4. Shri Siddhartha Srivastava, learned counsel appearing on behalf of respondent Nos.1 and No.2 – appellants before the High Court, has

supported the impugned order passed by the High Court allowing the application for condonation of delay and condoning the delay in preferring the appeal. A

4.1 It is submitted that when the High Court has exercised discretion and has condoned the delay, the same may not be interfered with by this Court in exercise of powers under Article 136 of the Constitution of India. B

4.2 It is further submitted by learned counsel appearing on behalf of respondent Nos.1 and 2 that as rightly observed by the High Court if the delay is condoned in that case the appeal will be considered and decided on merits and therefore, no prejudice would be caused to the appellant. It is submitted that in order to enable the respondents –appellants before the High Court, to submit the case on merits instead of non-suited them on the technical ground of delay, it is prayed to dismiss the present appeal. C

5. We have heard the learned counsel appearing on behalf of the respective parties at length. D

6. At the outset, it is noted that by the impugned order the High Court has condoned a huge delay of 1011 days in preferring the Second Appeal by respondent Nos.1 and 2 herein – original defendants – appellants before the High Court. While condoning the delay, the High Court has observed as under:- E

“In these circumstances, when there are certain questions, which require a debate in the second appeal, it is not necessary that this matter be rejected at this stage, without inviting a decision on merits. If the delay is condoned though enormous, what happens at best is to give an opportunity to the parties to canvass their respective case. Since this question being of procedure, the attempt of the court should be to encourage a healthy discussion on merits than rejecting at threshold. F

Viewed from such perspective, accepting the reasons assigned by the petitioner, the delay in presenting this second appeal should be condoned. G

Apparently, there is no wilful negligence on the part of the petitioners nor this attempt suffers from want of due diligence. It appears being a bonafide attempt on the part of the petitioners to H

- A canvass their claim particularly when the trial court had accepted their plea, which was subjected to reversal by the appellate court. However, the petitioners should compensate the respondent by means of costs for this delay. The contention of the respondent that valuable rights are accrued to her on account of inaction of the petitioners in failing to prefer the Second Appeal within time, cannot be a significant factor in the backdrop of the circumstances found in this case.

In the result, this petition is allowed condoning the delay of 1011 days in filing the second appeal subject to payment of costs of Rs.2,000/- (Rupees Two thousand only) to the learned counsel for the respondent on or before 05.10.2021.”

Thus from the aforesaid, it can be seen that the High Court has not observed that any sufficient cause explaining the huge delay of 1011 days has been made out.

- D 6.1 The High Court has observed that if the delay is condoned no prejudice will be caused to the appellant as the appeal would be heard on merits. The High Court has also observed that there is no wilful negligence on the part of the respondents herein nor it suffers from want of due diligence. However, from the averments in the application for condonation of delay, we are of the opinion that it was a case of a gross negligence and/or want of due diligence on the part of the respondents herein – appellants before the High Court in filing such a belated appeal.

- F 6.2 We have gone through the averments in the application for the condonation of delay. There is no sufficient explanation for the period from 15.03.2017 till the Second Appeal was preferred in the year 2021. In the application seeking condonation of delay it was stated that she is aged 45 years and was looking after the entire litigation and that she was suffering from health issues and she had fallen sick from 01.01.2017 to 15.03.2017 and she was advised to take bed rest for the said period.
- G However, there is no explanation for the period after 15.03.2017. Thus, the period of delay from 15.03.2017 till the Second Appeal was filed in the year 2021 has not at all been explained. Therefore, the High Court has not exercised the discretion judiciously.

- H 7. At this stage, a few decisions of this Court on delay in filing the appeal are referred to and considered as under:-

7.1 In the case of **Ramlal, Motilal and Chhotelal** (supra), it is A observed and held as under:-

In construing s. 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in **Krishna v. Chattappan**, (1890) J.L.R. 13 Mad. 269, “s. 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words ‘sufficient cause’ receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant.”

7.2 In the case of **P.K. Ramachandran** (supra), while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.

7.3 In the case of **Pundlik Jalam Patil** (supra), it is observed as under:-

“The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as “statutes of peace”. An unlimited and perpetual threat of limitation creates insecurity and

- A uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim “interest reipublicae ut sit finis litium”, that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.”
- B 7.4 In the case of **Basawaraj** (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression “sufficient cause” cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.
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- F 7.5 In the case of **Pundlik Jalam Patil** (supra), it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and “do not slumber over their rights”.
- G 8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by respondent Nos. 1 and 2 herein – appellants before the High Court for condonation of huge delay of 1011 days in preferring the Second Appeal. The High Court is not at all justified in exercising its
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discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos.1 and 2 herein – original defendants. Impugned order passed by the High Court is unsustainable both, on law as well as on facts.

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9. In view of the above and for the reasons stated above, the present Appeal is Allowed. The impugned order dated 16.09.2021 passed by the High Court condoning the delay of 1011 days in preferring the Second Appeal by respondent Nos.1 and 2 herein is hereby quashed and set aside. Consequently, Second Appeal No.331 of 2021 preferred by respondent Nos.1 and 2 herein stands dismissed on the ground of delay. The present Appeal is accordingly Allowed. However, there shall be no order as to costs.

Devika Gujral

Appeal allowed