

C Prabhakar Rao And Anr vs Sama Mahipal Reddy And Anr on 4 March, 2025

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Bench: Pamidighantam Sri Narasimha

2025 INSC 311

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
ARISING OUT OF SLP (C) No. 29261 OF 2024

C PRABHAKAR RAO AND ANR

...APPELLANT(S)

VERSUS

SAMA MAHIPAL REDDY AND ANR

...RESPONDENT(S)

JUDGMENT

1. Leave Granted.

2. Appellants as plaintiffs obtained an ex-parte decree in a suit for specific performance of an agreement for sale. That was challenged by the respondents/defendants by filing an application to set it aside and also filed another application for condoning the delay in its filing. The Trial Court refused to condone the delay and as a natural consequence it dismissed the application for setting aside ex-parte decree. The respondents/defendants filed a revision only against the order refusing to condone the delay. No revision was filed against the other consequential order. By the order impugned before us, the High Court not only condoned the delay but proceeded to set aside Reason:

the ex-parte decree and restored the suit for further hearing.

2.1 Partly allowing the appeal, while not interfering with the decision of the High Court in condoning the delay, we have revived and restored the I.A. No. 1163 of 2021 for setting aside the ex-parte decree to its original number and directed the Trial Court to hear and dispose of the application on its own merit. This decision is for the reason that the circumstances, justification, consideration and legal remedies for 'condoning the delay' on the one hand and 'setting aside the ex-parte decree' on the other are different and must be dealt with independently. The short facts leading to filing of this appeal are as under:-

3. The appellants, plaintiffs in the suit alleges that the first respondent, father of

second respondent, purchased certain property in 1992 through a sale deed and in the year 2012 gifted a part of it to his daughter. In the year 2015, both the father and the daughter executed an agreement of sale in favour of the appellants for a total consideration of Rs. 1,89,75,000/-. It is alleged by the appellants that, apart from an advance payment of rupees five lakhs on the date of the agreement, the appellants paid an additional amount of rupees forty lakhs to the respondents on 21.12.2015. It is further alleged by the appellants that clause six of the agreement of sale obligated respondents to conduct land survey, demarcate boundaries and proceed to execute the sale deed, however, instead of surveying the land, when the respondents issued a legal notice on 07.04.2016 cancelling the agreement of sale, the appellants had to approach the Civil Court to institute a suit for specific performance. 1

4. The respondents entered appearance through their counsel who filed his Vakalatnama on 30.11.2016. However, as the respondents did not even file a written statement and were not conducting the proceedings diligently, they were set ex-parte by the Trial Court on 14.02.2018. Eventually on 20.08.2018, the Trial Court passed an ex-

parte decree and further directed the respondents to execute the registered sale deed in favour of the appellants within six months after the appellants deposit balance sale consideration.

5. It is in the above-referred background that the respondents approached the Trial Court by filing two applications. The first application, (I.A. No. 493 of 2021) was for condoning the delay in filing the application for setting aside the ex-parte decree and the second application (I.A. No. 1163 of 2021) was for setting aside the ex-parte decree dated 20.08.2018. By its judgment dated 29.09.2023, the Trial Court took up I.A. No. 493 of 2021 which was only for condoning the delay and dismissed it. The Trial Court felt that the delay of 939 days was not sufficiently explained. The relevant portion of the order is as under:

“10. Now-a-days E-courts website is available to check the status of the case and even the petitioner is not prevented from coming to the court for approaching section officers to know the status of their case but the petitioner kept quite till 2021 by sleeping over his rights and now he came up with the present petition to set aside exparte decree and to condone the delay of 939 days, which is more than two years.

11. The petitioner filed vakalath on 30-11-2016 whereas exparte decree passed on 20-08-2018. However, in spite of ample opportunities the petitioner failed to file written statement and failed to know the status of the case and failed to defend bonafidely which show the negligent conduct of the petitioner. Hence, now the petitioner cannot take the shelter of Section 5 of Limitation Act as the purpose of Limitation Act is to extend time to bonafide litigants but not to encourage vexatious and frivolous litigations. The petitioner further admitted that he filed vakalath in the above suit and failed to file written statement, hence, the petitioner is having knowledge of the suit proceedings in the year 2016 itself.

Hence, the contention of the petitioner stating that they received notice in E.P in 2019 and came to know about the exparte decree cannot be considered, as rightly contended by the respondent. Hence, as the petitioner failed to show sufficient cause to condone the delay of more than two years this court is not inclined to allow the petition.”

6. In view of the dismissal of the application for condonation of delay, the Trial Court, without any further consideration and as if it is a natural consequence, proceeded to dismiss I.A. No. 1163 of 2021 for setting aside the ex-parte decree.

7. Questioning the above-referred order, the respondents approached the High Court of Telangana by filing a Civil Revision Petition No. 710 of 2024. The said Revision Petition is only against I.A. No. 493 of 2021 which is the application for condonation of delay, there was no revision against the other I.A. No. 1163 of 2021 dismissing the petition for setting aside the ex-parte decree.

8. By the order impugned before us, the High Court proceeded to allow the revision petition by which the delay was condoned, the ex- parte decree was set aside and the suit was restored. This is how the present appeal is preferred by the appellants/plaintiffs in the suit.

9. Mr. Raavi Yogesh Venkata, the learned counsel representing the appellants has submitted that apart from the merits of the matter, the High Court committed a jurisdictional error of setting aside the ex-parte decree when there was in fact no challenge to the decision of the High Court in I.A. No. 1163 of 2021.

10. We straightaway agree with the submission made by Mr. Raavi Yogesh Venkata. It is evident that the revisional jurisdiction of the High Court was invoked only against the order passed by the Trial Court in condoning the delay in filing the application for setting aside the ex-parte decree.

11. To start with, facts and events relating to passing of an ex-parte decree are distinct from the facts and events relating to the delayed filing of the application for setting aside of the ex-parte decree. Secondly, the procedure for setting aside the ex-parte decree will again be distinct from the procedure for condoning the delayed filing of the application to set aside the ex-parte decree. Thirdly, the adjudication and determination of a court with respect to setting aside the ex-parte decree are independent of the adjudication with respect to condoning the delay. Finally, the remedies against these orders are independent and one remedy would not subsume the other. They must be adopted and pursued independently. This much of clarity is sufficiently borne by our practice and procedure of law. The order passed by the High Court setting aside the ex-parte decree when no revision is filed against the said order of the Trial Court in I.A. No. 1163 of 2021 cannot be sustained.

12. The substantive part of the judgment of the High Court relates to reasons justifying the condonation of delay in filing the application for setting aside the ex-parte decree. For this purpose, the High Court has examined the contents of I.A. No. 493 of 2021 filed by the respondents and came to the conclusion that there is a justifiable reason to condone the delay. The High Court took into account the explanation given in paragraph 4 which is as under:

“4. Learned counsel for the petitioner contended that the petitioner is diligent in prosecuting the case as he filed the present application immediately after receiving the summons in E.P. No. 401 of 2019. Petitioner has not chosen to remain ex parte and was pursuing the same with his advocate on record, but the status of the same was not updated to the petitioner. Petitioner was given due instructions to the counsel on record in the lower Court for preparation and filing of the written statement. The substantial rights of the petitioner are involved in the property, and great prejudice would be caused to the petitioner if the application filed by the petitioner is dismissed without according an opportunity of hearing to the petitioner. Therefore, requested the Court to set aside the order of the trial Court.”

13. In view of the above, the High Court proceeded to condone the delay after noting that the property is valuable and that the respondents father and daughter must have at least one opportunity to contest the suit. The relevant portion of the judgment of the High Court is as under:

“7. Perusal of the agreement shows that there was a condition to pay the balance amount within two months. The trial Court granted ex parte decree without considering the cancellation of the document by defendants as they have not filed a written statement. This Court finds that substantial rights of petitioner herein are involved in the suit. No doubt there was a delay on the part of the petitioner. Though he instructed the counsel to file the written statement he could not verify whether his counsel filed the written statement or not and kept quiet till he received the notice in the E.P. In fact he filed the Vakalat filed in the year 2016 and he was set exparte on 20.08.2018 and he engaged another counsel on 24.03.2021 and filed the I.A in April, 2021. The suit is filed in the year 2016 and the written statement was not filed even after granting opportunity. The trial court decreed the suit. No doubt there are latches in the part of the petitioner herein that he could not verify whether his counsel field written statement or not and he could not verify the status of the case in the website. However, he should be given reasonable opportunity to pursue the suit for specific performance as he is the owner of the land and plaintiffs entered into agreement with him for purchase of the land and paid less than 50% of the amount, and still has to pay the balance amount. Considering the facts, this Court finds that it is just and reasonable to set aside the order of the trial Court and grant an opportunity to the petitioner herein to file a written statement and file a counter immediately before the trial Court.

8. In the result, this Civil Revision Petition is allowed by setting aside the order of the trial Court dated 29.09.2023, passed in I.A. No. 493 of 2021 in O.S. No. 150 of 2016 on costs of Rs.

5,000/- to be paid to the District Legal Services Authority, Sangareddy within one week from the date of receipt of a copy of this order. As the suit is of the year 2016, the trial Court is directed to dispose of the suit within six months from the date of this order, and both parties are directed to cooperate with the trial Court for the disposal of the suit within the stipulated time. Respondent

Nos. 1 and 2 deposited the amount at the time of E.P., and they are at liberty to file an application before the trial Court for withdrawal of the same.

Miscellaneous petitions pending, if any, shall stand closed.”

14. The High Court exercised its revisional jurisdiction and came to the conclusion that the delay in filing the application in setting aside the ex-parte decree should be condoned. We are not inclined to interfere with this order in exercise of our power under Article 136 of the Constitution. However, the later portion of the above referred order is unsustainable as the High Court proceeded to automatically restore the suit and directed the Trial Court to dispose of the suit expeditiously.

15. It is evident from the above-referred portion of the High Court’s order that there was no consideration whatsoever with respect to setting aside the ex-parte decree. The High Court, while disposing of I.A. No. 493 of 2021 has not applied its mind about the justification for setting aside the ex-parte decree. In this view of the matter, we set aside the directions of the High Court to the extent of restoration of the suit and the consequent direction that the suit should be disposed of within six months from the date of the order. The Trial Court has to hear I.A. No. 1163 of 2021 and decide the same on merits.

16. For the reasons stated above, the appeal is allowed in part. The finding of the High Court that there is a justifiable reason for condoning the delay in filing the application for setting aside the ex-parte decree is affirmed. The conclusion of the High Court that the suit is restored is set aside. We revive I.A. No. 1163 of 2021 and direct the Trial Court to take up said application and dispose it of as expeditiously as possible, preferably within two months from the date of the receipt of this order.

17. The appellants shall be entitled to cost quantified at Rs. 50,000/- payable by the respondents. With these observations the appeal is disposed of.

.....J. [PAMIDIGHANTAM SRI NARASIMHA]J.
[MANOJ MISRA] NEW DELHI;

MARCH 04, 2025.