

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

FRIDAY, THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

CIVIL REVISION PETITION NO: 9 OF 2024

Petition under Article 227 of Constitution of India against the order in dated 28.11.2023 in IA.No. 681 of 2023 in AS.SR NO. 3515 of 2023, on the file of the Court of the Principal District and Sessions Judge, Ranga Reddy District at L.B. Nagar.

Between:

Mutyapu Balamani @ T. Balamani, D/o. Late Mutyapu Rukkaiah, Aged about 36 years Occ. Housewife, R/o. Budwel Village, Rajendranagar Mandal, presently residing at H.No.7- 114/D2, Teachers Colony, Shankarpally (V and M), R.R.District, Ranga Reddy District

...PETITIONER/PETITIONER

AND

1. Mutyapu Chokkaiah, S/o. Late Mutyapu Laxmaiah, Aged about 59 years Occ. Agriculture, R/o. Tangedpally village, Chevella Mandal, Ranga Reddy District
2. Mutyapu Venkataiah, S/o. Late Mutyapu Ashappa, Aged about 48 years Occ. Agriculture,
3. Mutyapu Laxmaiah, S/o. Late Mutyapu Ashappa Aged about 36 years Occ. Agriculture
4. Kesaram Kasmsanuna, W/o. Chander D/o. Balagoud, Aged about 36 years Occ. Agriculture (Respondent Nos.1 to 4 are R/o. Tangedpally village, Chevella Mandal, Ranga Reddy District)
5. Kurva Srishailam, died per Lrs (Defendant No.7 to 11)
6. U. Sudha, W/o. Naveen Kumar, Aged about 46 years Occ. Housewife, R/o. H.No.4-11-111/378, Falaknama, Charminar, Hyderabad,
7. T. Anusha @ Anusuja, W/o. Late T. Srisailam, Aged about 50 years, Occ. Labour,
8. T. Srinivas, S/o. Late T. Srisailam, Aged about 23 years Occ. Labour
9. T. Ravinder, S/o. Late T. Srisailam, Aged about 21 years Occ. Labour, (Respondent No. 7 to 9 are R/o. H.No. 9-20, Ismailkhanpet now known as Eshwarpur village, Sanga Reddy Mandal, Medak District)
10. Chigure Kistamma @ Kethamma, W/o. Ch. Veeraswamy, Aged about 25 years Occ. Housewife, R/o. Ramachendrapuram village, Narsapuram Mandal, Medak District.
11. Lalitha, W/o. Balatnarsimlu, Aged about 23 years Occ. Housewife, R/o. Shilvar Form village Rudrur Mandal, Nizamabad District

12. K.V. K. Reddy, S/o. K. Raghava Reddy, Aged about 41 years. Occ. Business, R/o. 8-2-693/A/405 Road No.12, Banjara Hills. Hyderabad.
13. N.E. Jitender, S/o. N. Eknath, Aged about 43 years Occ. Business, R/o. H.No.4-5-908/3, Badichowdi, Hyderabad.
14. D. Krishna, S/o. Late D.C. Naidu, Aged about 40 years Occ. Business, R/o. Ranga Reddy Street, Pulivendula, Kadapa District,
15. Anugu Sugandha W/o. A. Surender Reddy, Aged about 51 years, Occ. Housewife, R/o. H No.3-5-199/B/B, Harivihar, Narayanaguda, Hyderabad.
- (Respondent Nos. 4 to 9, 12 to 14 are not necessary parties)

...RESPONDENTS/RESPONDENTS

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 receive Medical Certificate, dated 11.12.2023, issued by Megha Hospital, Shankarpally, Ranga Reddy District.

Counsel for the Petitioner: SRI. B BAL REDDY

Counsel for the Respondent Nos. 1 to 3: SRI. GURU RAJ JOSHI

The Court made the following: ORDER

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

CIVIL REVISION PETITION No.9 OF 2024

ORDER:

This Civil Revision Petition is filed aggrieved by the order dated 28.11.2023 in IA.No.681 of 2023 in AS (SR) No.3515 of 2023 passed by the Principal District and Sessions Judge, Ranga Reddy District at L.B.Nagar,

2. Heard Sri B.Bal Reddy, learned counsel for petitioner and Sri Gururaj Joshi, learned counsel for the respondent Nos.1 to 3. No representation on behalf of respondent Nos.10 & 11 despite service of notice.

3. Brief factual matrix of the case is that petitioner herein filed a suit in O.S.No.132 of 2006 on the file of Senior Civil Judge at Chevella against the respondents herein seeking partition of the suit schedule property and the said suit was dismissed by the trial Court *vide* judgment and decree dated 05.12.2022. Aggrieved by the same, petitioner herein preferred appeal *vide* A.S.(SR).No.3515 of 2023 along with an application-IA.No.681 of 2023 for condonation of delay of 18 days in filing the said appeal.

The first Appellate Court *vide* impugned order dated 28.11.2023 dismissed IA.No.681 of 2023 on the ground that except saying

that due to ill-health, petitioner could not approach her counsel and file an appeal within a period of limitation, no material was placed on record in support of the said contention. Aggrieved by the same, present Civil Revision Petition is filed.

4. Learned counsel for petitioner contended that petitioner herein could not prefer an appeal within time as she was suffering with health issues. He further contended that along with the present revision, an application in I.A.No.1 of 2024 is filed to receive the Medical Certificate, dated 11.12.2023, which shows that the petitioner was suffering with urinary tract infection with gastritis and the doctors advised her to take rest for three weeks from 09.02.2023. However, said certificate was not filed before the first Appellate Court. It is further contended that valuable rights of the petitioner in respect of immovable property are involved, therefore, the first Appellate Court ought to have taken a liberal view while dealing with an application for condonation of delay.

5. In support of his contention, learned counsel for petitioner relied upon the decision of a learned single Judge of erstwhile

High Court of A.P., in **Gangarapu Karennu v. Jami Karuvu and another**¹, wherein it was observed that the Court below ought to have displayed a somewhat liberal approach in dealing with the application for condonation of delay. Under Section 5 of Limitation Act, 1963, a fair amount of discretion is vested in the Courts while dealing with such applications and the Courts should be neither too liberal nor too technical and pedantic in dealing with the applications for condonation of delay. In the said case, there was a delay of 13 days in filing appeal. Initially, the first Appellate Court dismissed the said application on the ground that mere ignorance is not an excuse and that nothing prevented him from approaching his counsel and filing the appeal in time, and on revision, this Court allowed the revision and condoned the delay. The learned counsel for petitioner finally prayed to allow the revision and set aside the impugned order.

6. *Per contra*, learned counsel for respondent Nos.1 to 3 contended that except saying that due to ill-health of the petitioner, the delay was occurred, no document or material was placed on record and therefore, learned first Appellate Court has

¹ 2011 (4) ALD 515

rightly dismissed the application and no ground is made out to interfere with the impugned order.

7. Perusal of the record would disclose that petitioner filed a suit in O.S.No.132 of 2006 on the file of Senior Civil Judge at Chevella, Ranga Reddy District, for partition of the suit schedule property and the said suit was dismissed *vide* judgment and decree dated 05.12.2022. Aggrieved by the same, petitioner preferred appeal in A.S.(SR).No.3515 of 2023 before the Principal District and Sessions Judge, Ranga Reddy, along with an application for condonation of delay 18 days in filing the appeal, however, the first Appellate Court has dismissed the application on the ground that no material is placed in proof of ill-health of the petitioner for condoning the delay of 18 days.

8. In this context, it is relevant to refer to the judgment of the Hon'ble Supreme Court in *N.Balakrishnan Vs. M.Krishnamurthy*², wherein at paras 9 and 10 it is held as hereunder:

“9. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised

² AIR 1998 Special Court 3222

only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of shortest range may be uncondonable due to want of acceptable explanation, whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court.

10. The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause."

8.1. In the said judgment, the Hon'ble Supreme Court held that Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory

tactics, but seek their remedy promptly; that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.

9. Applying the proposition laid down by the Hon'ble Supreme Court in N.Balakrishnan's case (cited supra), in the instant case it is to be seen that the petitioner has produced medical certificate evidencing her ill-health, due to which delay occurred in preferring the appeal. Therefore, it is axiomatic that 'sufficient cause' has been shown by the petitioner to condone delay in preferring the appeal.

10. Further it is relevant to note that since the suit was filed for partition of the suit schedule property, substantial rights of the parties are involved and as such, to safeguard the interests of the party in pursuing their remedy before the Court of law, this Court deems it appropriate to condone the delay in filing the Appeal as sufficient cause/plausible explanation is offered by the petitioner.

11. It is settled principle of law that right of appeal by a party cannot be thrown out at the threshold purely on technical grounds, especially for a short delay of 18 days.

12. In the light of the above, this Court is of the considered opinion that the first Appellate Court ought to have allowed the application by taking liberal view since the valuable rights of the petitioner in immovable property are involved. However, the first Appellate Court failed to exercise the discretion vested with it and thus, the impugned order is liable to be set aside.

13. Accordingly, the Civil Revision Petition is allowed and the impugned order dated 28.11.2023 in I.A.No.681 of 2023 in A.S.(SR) No.3515 of 2023 is set aside. Consequently, I.A.No.681 of 2023 in A.S.(SR).No.3515 of 2023 stands allowed and the first Appellate Court is directed to entertain the appeal filed by the petitioner and dispose of the same on merits. There shall be no order as to costs.

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

SD/- MOHD.ISMAIL
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal District and Sessions Judge, Ranga Reddy District at L.B. Nagar.
2. One CC to SRI. B BAL REDDY Advocate [OPUC]
3. One CC to SRI. GURU RAJ JOSHI Advocate [OPUC]
4. Two CD Copies.

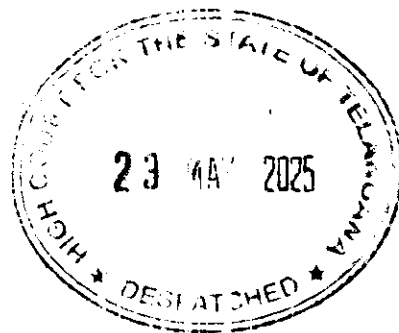
PM

HIGH COURT

DATED:28/03/2025

ORDER

CRP.No.9 of 2024



ALLOWING THE CIVIL REVISION PETITION

⑥

Kra
13/5/25