

**HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
HON'BLE JUSTICE M.G.PRIYADARSINI**

**I.A.No.3 of 2023
In
A.S. No.320 OF 2023**

ORDER: (Per Hon'ble Justice Moushumi Bhattacharya)

The applicants/appellants pray for condonation of 428 days delay in filing the present Appeal Suit against the impugned judgment and decree dated 14.09.2021 passed by the II Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar in a Suit *vide* O.S.No.54 of 2021. The respondent No.1 filed a Suit against the respondent Nos.2-11 for specific performance of an alleged Agreement of Sale dated 11.03.2013 in respect of the suit schedule property to the extent of Acs.146.05 guntas of land situated at Vattinagulapally Village, Rajendra Nagar, Ranga Reddy District.

2. The appellants were not made parties to the Suit and were granted leave to Appeal by an order dated 11.06.2024. The respondent No.1/contesting respondent filed a Petition for Special Leave to Appeal (C) No.15431/2024 against the said order which was dismissed by the Supreme Court on 22.07.2024. The

Supreme Court refused to interfere with the findings of this Court.

3. The counter of the respondent No.1 (plaintiff in O.S.No.54 of 2021) to the present Interlocutory Application raises an objection to the prayer for condonation of delay. The primary objection relates to the pendency of multiple proceedings filed by the parties in the Suit as well as in the Appeal and that the Sale Deeds executed by the respondent Nos.2-11 (defendant Nos.1-10 in the Suit) in favour of the appellants are forged and fabricated documents. The respondent No.1 states that leave to Appeal should have been granted only after condonation of delay.

4. The backstory to the present Appeal has already been discussed in the order granting leave to Appeal and is hence not being repeated in detail. The order granting leave to Appeal dated 11.06.2024 forms part of the Records of this Court.

5. The only relevant fact is that the respondent No.1 (alleged buyer of the suit schedule property) filed a Suit for specific performance against the respondent Nos.2-11 (sellers) in respect of an alleged Agreement of Sale dated 11.03.2013. The Suit was

decreed without contest on 14.09.2021. The respondent No.1/plaintiff filed an Execution Petition in November, 2022 i.e., after 1 year from the date of the decree. The Execution Petition is pending as on date. The 3rd party appellants came to know of the decree in the Suit on 14.07.2023 and filed the present Appeal on 04.08.2023 seeking leave to Appeal together with a prayer for condonation of delay. The appellants were granted leave to Appeal on 11.06.2024.

6. The only question which falls for decision is whether the appellants' application for condonation of delay should be allowed.

7. The appellants were admittedly non-parties to the Suit. The appellants pray for condonation of delay on the ground that the appellants were not aware of the Suit filed by the respondent No.1 or the decree passed therein and came to know of the same only on 14.07.2023 when the respondent No.1 took aggressive steps to execute the decree i.e., to have the appellants evicted from the suit schedule property. The appellants were in possession of the concerned plots as on the date of their knowledge of the decree i.e., on 14.07.2023. The appellants claim

to be the prior purchasers of the suit schedule property having purchased the same from the respondent Nos.2-11 (defendant Nos.1-10 in the Suit). The appellants filed the present Appeal Suit immediately thereafter i.e., in less than a month, on 04.08.2023.

8. The object of a litigant being held to a prescribed period of time for approaching a Court is recognized as a matter of public policy. The concept of public policy emanates from discouraging laches and acquiescence on the part of litigants who seek to take the Court processes for granted. The prescribed timeframes under particular Statutes and in the Schedule to The Limitation Act, 1963 is for the salutary objective of inculcating discipline in non-vigilant litigants. It is also for the purpose of ensuring that a cause of action has a shelf-life in the sense of being kept alive and relevant for filing a Suit or proceeding in a Court of law. Public policy however also demands that the prescribed timelines be relaxed in appropriate exigencies. The Limitation Act makes room for such exigencies in the form of legal disabilities where a party is physically or mentally unable to approach a Court - sections 6 and 7 of the Limitation Act.

9. The Supreme Court viewed the Covid-19 pandemic as a circumstance which was unusual enough to call for relaxation of statutory timelines. Section 5 of the Limitation Act gives discretionary powers to a Court to stretch the prescribed timelines subject to the satisfaction of the sufficiency of the cause shown.

10. The issue of delay is more relevant in adversarial litigation where the parties are aware of the *lis* and the need of redress in Appeal. The law of limitation must hence suitably bend in favour of a party who was kept outside the *lis*.

11. The Court must only see whether there are *mala fides* on the part of the appellants or dilatory strategies employed by them: *N. Balakrishnan v. M. Krishna Murthy*¹.

12. The question of limitation is hence not an inflexible standard or one that cannot be stretched where the Court deems it appropriate to do so. Needless to say, the discretion is to be exercised judiciously in order to advance a justice-oriented approach. The question of limitation is also a mixed bag of the

¹ (1998) 7 SCC 123

law seen against the relevant facts. Hence, the facts in the present case assume importance and are briefly referred to above.

13. The appellants, who are 100 in number, have literally been left land-less upon coming to know of the Suit filed by the respondent No.1 (buyer) against the respondent Nos.2-11 (sellers) for specific performance of an Agreement of Sale in respect of the same property which the appellants had purchased from the sellers way back in 1983-1986.

14. Whether 14.07.2023 is to be taken as the appellants' date of knowledge is a fact which becomes less significant when compared to the appellants not being made parties to the Suit.

15. The incapacity of a non-party may be equated to the legal disability under sections 6 and 7 of the Limitation Act since the absence of lack of knowledge is an impairment of the non-party's right to seek legal redress within the prescribed timelines. It may even be said that a non-party's prayer for condonation of delay should be assessed on a wholly different template. While a party to a *lis* is expected to be diligent in approaching the Appellate forum, a non-party cannot be put through the same regimen of

limitation as well as of expected conduct. It should also be borne in mind that the Suit filed by the respondent No.1 was decreed without the rigour of trial and/or contest. The window of knowledge for timely-action to the appellants was hence further curtailed.

16. Therefore, the only determining factor for condonation of delay in third-party Appeals would be to see whether the non-party satisfies the requirement of sufficient cause. The question of condonation of delay in the present Appeal has become academic since the delay in 2 other connected Appeals (A.S.Nos.1 and 5 of 2023) filed by another set of appellants from the same impugned judgment and decree, has already been condoned by a Co-ordinate Bench on 18.04.2023.

17. The present Appeal - A.S.No.320 of 2023 is the third Appeal filed against the impugned judgment and decree and is a part of the batch matters which are presently being heard. Hence, there should not be a departure in terms of condoning the delay in A.S.No.320 of 2023 as a matter of comity and propriety. Moreover, the common order dated 11.06.2024 granting leave to Appeal to the appellants in the present Appeal specifically

records that the respondent Nos.2-11 sellers (defendant Nos.1-10 in the Suit) have not contested the maintainability of the Appeals.

18. The non-appearance of the sellers would itself dilute the opposition of the respondent No.1 (buyer) to the question of condonation of delay and cast a serious doubt on the conduct of the respondent No.1 (buyer) in opposing the prayer for condonation where the question of limitation has already been answered in favour of the appellants in 2 other related Appeals.

19. The conduct of the respondent No.1 in mounting a hyper-headed challenge to the Appeal and throwing a spanner at each and every step of the appellants' efforts to have the Appeal heard on merits with hyper-technical objections is also relevant for the application. This Court is not only a Court of law but is also a Court of justice and the above facts would amount to vital considerations for exercise of discretionary powers for condoning the delay in filing of the present Appeal.

20. The decisions relied on by the respondent No.1 do not come to his assistance.

20.1. *Postmaster General v. Living Media India Limited*² dealt with the delay on the part of a Government Department where the Supreme Court found that the Department could not give a plausible and acceptable explanation for the delay. *Pathapati Subba Reddy (Died) by L.Rs. v. Special Deputy Collector (LA)*³ also contains a specific finding that the concerned High Court rightly refused to exercise discretion for condoning the delay in view of the lack of sufficient cause being shown by the appellants. *Popat Bahiru Govardhane v. Special Land Acquisition Officer*⁴ specifically dealt with Section 28-A of the Land Acquisition Act, 1894, which provides for re-determination of the amount of compensation within 3 months from the date of the Award of the Court. The Supreme Court relied on this statutory provision to hold that the Court has no power to extend the period of limitation on equitable grounds. *Lingeswaran v. Thirunagalingam*⁵ also involved a finding that the delay had not been properly explained and the High Court had rightly dismissed the application for condonation of delay.

² (2012) 3 SCC 563

³ 2024 SCC OnLine SC 513

⁴ (2013) 10 SCC 765

⁵ 2022 SCC OnLine SC 2233

21. Paragraphs 7 and 8 of the affidavit filed in support of I.A.No.3 of 2023 state that the petitioners/appellants came to know of the pending proceeding only on 14.07.2023 when the respondent No.1 came to the site with 50 persons and material for constructing a wall on the plots in the midnight of 13/14.07.2023. The appellants tried to resist the respondent No.1 and their men and filed a complaint at the Gachibowli Police Station at 1:30 A.M. in the wee hours of 14.07.2023. The statements made in the said paragraphs record that the appellants claim to be purchasers of the suit schedule property from the respondent Nos.2-11 (sellers) and have been totally unaware of the alleged Agreement of Sale between the respondent No.1 and the respondent Nos.2-11 as well as the judgment and decree dated 14.09.2021. The appellants also say that the appellants have filed the present Appeal by way of abundant caution despite the pendency of the connected Appeals.

22. The contentions of the appellants, along with the attending facts and circumstances, primarily that of the appellants being non-parties to the Suit satisfies the sufficiency of cause requirement under Section 5 of The Limitation Act, 1963. There is

no evidence of any foul play or any attempt to mislead this Court on the part of the appellants. The appellants are simply trying to assail the impugned judgment on merits which has left the appellants homeless. In the peculiar facts of the present Appeal, the Court can well go to the extent of saying that the appellants have a right to have the delay condoned *ex debito justitiae*.

23. The discussion and the reasons stated in the foregoing paragraphs persuade us to allow the application for condonation of delay.

24. I.A.No.3 of 2023 is accordingly allowed and disposed of. The delay of 428 days is condoned.

MOUSHUMI BHATTACHARYA, J

M.G.PRIYADARSINI, J

Date: 21.08.2024

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