



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI**

MONDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND TWENTY FIVE

PRESENT

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA
KRISHNA RAO**

IA NO: 1 OF 2023

IN

SECOND APPEAL NO: 385 OF 2023

Between:

1. TATINA KASI VISWESWARA RAO, S/o Raja Rao, Aged about 61 years,
R/o. Prakasaraopalem, West Godavari District.

...Petitioner

AND

1. TATINA SITARATNAM DIED, DIED

2. Tatina Venkata Krishna Ranga Rao, (died)

3. Smt Lakamsani Krishna Veni, W/o Chakradara Rao, Aged about 62 years,
R/o. D.No.4-48-2, Old CBI town, Visakhapatnam.

4. Tatina Raja Rao, (died)

5. Bogavilli Vijaya Lakshmi, W/o Veerraju, Aged about 55 years, Cultivation,
R/o.IVelivenu, Undrajavaram Mandal.

...Respondents

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 condone the delay of 247 days in preferring the appeal against the Judgment and Decree in A.S.No.2 of 2010 on the file of THE SENIOR CIVIL

JUDGE AT TADEPALLIGUDEM, dated 29.06.2022 reversing the Judgment and decree in O.S.No. 50 of 2001 on the file of THE PRINCIPAL JUNIOR CIVIL JUDGE AT TADEPALLIGUDEM, dated 05.12.2009 and be pleased to pass

Counsel for the Petitioner: SURESH KUMAR ROUTHU

Counsel for the Respondents: V V RAVI PRASAD Counsel for the Respondents:

The Court made the following order:

Order:

The petitioner/appellant is the 2nd defendant in A.S.No.2 of 2010 and against him and another, the respondent/plaintiff filed the suit in O.S.No.50 of 2001 before the Principal Junior Civil Judge, Tadepalligudem. After full-fledged trial, the Principal Junior Civil Judge, Tadepalligudem, dismissed the said suit against which, appeal suit in A.S.No.2 of 2010 was preferred before the Senior Civil Judge, Tadepalligudem and the said appeal suit was allowed by setting aside the judgment and decree passed by the trial Judge against which, the instant second appeal in S.A.No.385/2023 has been filed by the 2nd defendant.

2. The case of the petitioner as per the recitals of affidavit of the petitioner, in brief, is as follows:

He is the appellant in the second appeal and the second appeal has been filed against the judgment and decree passed in A.S.No.2 of 2010 on the file of the Senior Civil Judge, Tadepalligudem. The petitioner further pleaded that the counsel in the first appellate Court was not even informed him about the judgment and decree till he enquired about the first appeal and when he enquired on 18-11-2022, his counsel in the first appellate Court filed a copy application and certified copy of the judgment was received by him and he was admitted in a hospital because of his ill-health and he is a diabetes patient and suffering from blood pressure and till he recovered from his

ill-health, he has not even visited the office of his counsel. He further pleaded that when he visited the office of his counsel in the first week of February, 2023, he was informed about the delay in filing the present second appeal and that the delay of 247 days was occurred in filing the second appeal and that he filed the present application under Section 5 of the Limitation Act, 1963.

3. The learned counsel for respondents opposed the said application filed by the petitioner and contended that no medical certificate has been filed by the petitioner to prove the alleged illness and no document is filed by the petitioner to prove his *bona fides* as stated in the affidavit of the petitioner and that the delay is not properly explained by the petitioner and therefore, the petition in I.A.No.1 of 2023 may be dismissed.

4. Heard Sri G. Gopala Krishna and Sri Suresh Kumar Rowthu, learned counsel for the petitioner and Sri V.V. Ravi Prasad, learned counsel for the respondents.

5. The learned counsel for respondents relied on ***State of Madhya Pradesh v. Ramkumar Choudhary***¹. In the aforesaid case, the Apex Court held as follows:

“5.1. delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party. The relevant passage of the same is profitably extracted below:

“24. *In the aforesaid circumstances, we made it very clear that we are not going to look into the merits of the matter as long as we are not convinced that sufficient cause has been made out for condonation of such a long and inordinate delay.*

25.

26. *The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is*

¹ 2024 SCC Online SC 3612

held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes

a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.”

The learned counsel for respondents also placed a reliance on **Balwant Singh v. Jagdish Singh**². In the aforesaid case, the Apex Court held as follows:

“26. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

The facts in the aforesaid two case laws relate to the condonation of delay of 5 years, 10 months and 16 days, and 778 days, respectively. In the present case, the petitioner/appellant filed this application under Section 5 of the Limitation Act to condone the delay of 247 days in preferring the second appeal.

6. The ratio laid down in the aforesaid two case laws is not at all disputed. No doubt, delay should not be excused as a matter of generosity. It is also quite clear that the Court should not waive limitation, for all practical

² (2010) 8 SCC 685

purposes, by condoning the inordinate delay caused by a tardy lackadaisical negligent manner of functioning. In the case of ***Pathapati Subba Reddy v. Special Deputy Collector***³, the Apex Court held as follows:

“Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence.”

In the case of ***Raheem Shah v. Govind Singh***⁴, the Apex Court held as follows:

“5. This Court in *Collector (LA) v. Katiji* [*Collector (LA) v. Katiji*, (1987) 2 SCC 107], has held as hereunder : (SCC p. 108, para 3)

“3. The legislature has conferred the power to condone delay by enacting Section 5 [Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period] of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on “merits”. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that:

‘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 2024 SCC OnLine SC 513

⁴ (2023) 18 SCC 764

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.

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.

6. It must be grasped that judiciary is respected not 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.'

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal."

In the case on hand, the petitioner explained in the affidavit itself that he was not even intimated by his counsel in the first appellate Court about the disposal of the first appeal and on knowing the same through others, he approached the counsel before the first appellate Court and filed a copy application and obtained certified copy of the judgment and subsequently he fell in sick and that he could not file second appeal within the period of limitation.

7. The petitioner herein filed the application under Section 5 of the Limitation Act. It is well settled that the legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act in order to enable the courts to do substantial justice to the parties by disposing the main case on merits. The Courts have to adopt a justice oriented approach dictated by the upper most consideration. That ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits, unless he has by gross negligence, deliberate inaction or something akin to misconduct disentitle himself from seeking the indulgence of the Court. In the case on

hand, admittedly, the second appeal has been filed against the judgment and decree passed by the first appellate Judge. In a second appeal stage, the appellant has to prove whether there are any substantial questions of law for entertaining the second appeal, that has to be done by this Court only after entertaining the second appeal and after condoning the delay of Section 5 of Limitation Act petition only it has to be heard whether there are any substantial questions of law arose in the second appeal at the stage of admission itself. It is axiomatic that condonation of delay is a matter of discretion of the Courts and Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is only a criteria. In the case on hand, the petitioner filed the second appeal against the judgment and decree passed by the first appellate Court with a delay of 247 days. No doubt, if delay is condoned, the same will cause some hardship to the respondent/plaintiff. Therefore, the same has to be compensated by way of imposing costs of Rs.5,000/- to the petitioner herein payable to the respondent/plaintiff.

8. In the result, the petition in I.A.No.1 of 2023 is allowed, condoning the delay of 247 days in filing the second appeal and the petitioner herein is directed to pay costs of Rs.5,000/- (Rupees five thousand only) to the respondent/plaintiff or counsel on record on or before 04th August, 2025 and file a memo before the Registry to that effect, failing which the petition in I.A.No.1 of 2023 shall stand dismissed.

REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. TATINA SITARATNAM DIED, DIED
2. Tatina Venkata Krishna Ranga Rao, (died)
3. Smt Lakamsani Krishna Veni, W/o Chakradara Rao, Aged about 62 years, R/o. D.No.4-48-2, Old CBI town, Visakhapatnam.
4. Tatina Raja Rao, (died)
5. Bogavilli Vijaya Lakshmi, W/o Veerraju, Aged about 55 years, Cultivation, R/o.IVellivenu, Undrajavaram Mandal.
6. One CC to SRI. SURESH KUMAR ROUTHU Advocate [OPUC]
7. One CC to SRI. V V RAVI PRASAD Advocate [OPUC]
8. One CC to SRI. Advocate [OPUC]
9. Two CD Copies

**HIGH COURT
VGKRJ
DATED:28/07/2025**

**ORDER
SA NO. 385 OF 2023**