

**HIGH COURT OF ANDHRA PRADESH****Bench: Justices U. Durga Prasad Rao and Kiranmayee Mandava****Date of Decision: 19<sup>th</sup> June 2024**

Case No.: IA 1 of 2021 in First Appeal No. 384 of 2021

**APPELLANT(S): Trust Association of CBCNC .....Appellant****VERSUS****RESPONDENT(S): M/s H R R Constructions Private Limited and Others  
.....Respondents****Legislation:**

Section 5 of the Limitation Act, 1963

**Subject:** Petition for condonation of delay in filing an appeal against the judgment in O.S No. 244/2006, where the petitioner claimed unawareness of the suit and its result until recently, resulting in a delay of 2361 days.**Headnotes:**

Condonation of Delay – Sufficient Cause – Petitioner sought condonation of delay of 2361 days in filing an appeal – Claimed unawareness of suit and its result till recently – Respondents opposed, alleging falsehood in petitioner’s claims – Court emphasized liberal construction of “sufficient cause” to advance substantial justice – Considered petitioner’s plausible explanation and substantial questions of fact and law involved – Delay condoned [Paras 1-18].

“Government vs. Private Litigants” – Liberal Approach – Reference to principles where government involved – Emphasis on substantial justice over technical considerations – Inapplicability of such latitude to private litigants – Consideration of bona fides and diligence in delay matters – Recognition that judicial discretion must balance both parties’ interests [Paras 7-10].

Case Management and Procedural Lapses – Examination of concurrent posting of related cases – Lack of direct knowledge attribution between separate suits – Assessment of petitioner’s awareness and action upon discovering suit details – Rejection of collusion allegations based on common legal representation [Paras 11-16].

Decision – Petition Allowed – Delay of 2361 days in filing appeal condoned – Emphasis on merits over procedural delays in interest of justice [Para 18].

**Referred Cases:**

- State of Karnataka v. Y. Moideen Kunhi (2009) 13 SCC 192
- Sheo Raj Singh v. Union of India (2023) 10 SCC 531 = MANU/SC/1098/2023
- Pundlik Jalam Patil (dead) by LRs v. Executive Engineer Jalgaon Medium Project (2008) 17 SCC 448 = MANU/SC/4694/2008
- Dhiraj Singh (Dead) Through Legal Representatives v. State of Haryana 2014(14) SCC 127

- Collector (LA) v. Katiji (1987) 2 SCC 107 = 1989 SCC (Tax) 172
- Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy (2013) 12 SCC 649
- Brijesh Kumar v. State of Haryana (2014) 11 SCC 351

Representing Advocates:

For Appellant: Vajjhala Satyanarayana Prasad, P. Sri Ram

For Respondents: V.V. Ravi Prasad, Pillix Law Firm

**ORDER:** *(Per Hon'ble Sri Justice U. Durga Prasad Rao)*

The petitioner/appellant/plaintiff filed the instant application U/s 5 of Limitation Act to condone delay of 2361 days in filing the appeal against the judgment dated 11.02.2015 in O.S No.244/2006 on the file of I Additional District Judge, Visakhapatnam.

**2.** Petitioner's case is thus:

(a) The affidavit holder is the Chairman of petitioner trust.

Earlier he was one of the members of Ananda Rao Memorial Baptist Church, Pamulalanka, Krishna District and he was associated with CBCNC. In the election held in the year 2007 at Machilipatnam, the petitioner was elected as Chairman of TRUST Association, CBCNC. Immediately the list of office bearers was submitted to the District Registrar of Assurances, Kakinada. Elections are being conducted once in every five years for electing the members of CBCNC. Accordingly, the elections were held in 2012 at Pedamaddali and in 2017 at Pamulalanka and immediately the list of office bearers was submitted to the District Registrar of Assurances, Kakinada.

(b) The further case of the petitioner is that the petitioner being the chairman of TRUST Association, has been protecting the properties of the TRUST Association by filing several legal proceedings. For instance, he filed OS 51/2012 on the file of II Additional Senior Civil Judge, Vijayawada against one M. Nageswara Rao and other for delivery of property. The said suit was decreed on 26.10.2015. Another suit OS No.342/2011 was filed on the file of VIII Additional District & Sessions Judge, Vijayawada against one M. Ramesh for delivery of property and it was decreed on 31.10.2015. Aggrieved, the defendants filed AS No.211/2016 before the common High Court and same is pending. So also OS No.390/2017 was filed on the file of

II Additional Senior Civil Judge, Kakinada against T. Prasanna Kumar and others seeking declaration that the registered lease deed dated 11.02.2013 was null and void. The said suit was decreed on 21.10.2019. The petitioner, in the like manner filed some other suits and writ petitions to protect the properties of TRUST Association, CBCNC.

(c) So far as OS No.244/2006 is concerned, it was filed by the then Chairman Dasari Samuel seeking for declaration that the sale transactions covered by Ex.A3 to A16 executed by D15 to D18 in favour of D1 to D14 are without any consideration and they are void and that the plaintiff society is the absolute owner of the properties covered by those sale deeds and that as per the constitution of plaintiff society, the vendors i.e., defendants 15 to 18 have no authority to sell the property without any resolution and no consideration was paid as per the records of the society and possession was not handed over to the purchasers rather the possession was with the plaintiff society. In the said suit defendants 2 to 10, 12, 15 and 16 remained *ex-parte* and suit against defendant 13 was dismissed. While so, D1, D11, D12 and D14 filed common written statement and D18 filed a separate written statement. During trial Dasari Samuel (Styling himself as Chairman) was examined as PW.1 and Ex.A1 to A21 were marked on behalf of plaintiffs. One T. Malini Tyagaraj was examined as DW.1 and Ex.B1 to B82 were marked on behalf of defendants. The trial Court on an erroneous appreciation of facts and law dismissed the suit on 11.02.2015. Aggrieved, the petitioner herein as Chairman of the appellant trust filed the instant appeal.

(d) It is further pleaded that the petitioner was not aware of the filing of the suit by Dasari Samuel or the result thereof till recently. One TDS Kumar claiming himself as Chairman of the TRUST Association of CBCNC filed OS No.18/2019 on the file of I Additional District Judge, Visakhapatnam seeking injunction. In the said suit the petitioner was arrayed as 4<sup>th</sup> defendant in his individual capacity. The petitioner filed written statement and contested the suit and also contended that he is the chairman of TRUST Association of CBCNC. After full-fledged trial the suit was dismissed. Against the judgment D9 and D10 filed AS No.132/2017 before High Court wherein *status quo* order was passed. In that appeal the petitioner filed IA to grant injunction restraining the appellants from making construction in the schedule property. In the said petition counter was filed wherein it was mentioned about the dismissal of writ petitions as well as OS No.244/2006

filed by Dasari Samuel. On intimation of petitioner's counsel the petitioner applied for certified copies of judgment and decree in OS No.244/2006 on 29.09.2021 and they were made ready on 12.10.2021. It is submitted though the judgment in OS No.244/2006 was pronounced on 11.02.2015, for the reasons best known, Dasari Samuel did not file the appeal within time. Thus it is evident that he was in collusion with the defendants in that suit. Now the contesting defendants are taking advantage of the same. Dasari Samuel in collusion with the contesting defendants acted detrimental to the interest of TRUST Association of CBCNC. The trial Court though observed that Dasari Samuel had no *locus standi* to represent the TRUST Association of CBCNC, however, went into the merits and came to the conclusion that valid persons executed documents and ultimately dismissed the suit.

(e) While so, upon verification with the District Registrar, Kakinada, the petitioner came to know that the total members of Society are 23 and the said proceedings contain the names of those members and office bearers. As per the constitution of CBCNC, the elections should be held for every five years. As per the proceedings of the District Registrar, Kakinada annual filing was done till 1990-94 on 11.09.1990 and no list of governing body members was taken on record since then. None of the executants of the documents, arrayed in the suit, were shown as elected members as per the list dated 11.09.1990. Hence the execution of the documents by those persons, *per se*, is without any authority. However, such persons styling themselves as „Office Bearers“ and executing sale deeds in relation to trust property in favour of different companies shows the *malafides* of vendors and vendees. As per the by-laws submitted to Registrar on 20.01.1990, the persons executed the sale deeds were not the elected members of either TRUST Association of CBCNC or the CBCNC.

(f) Be that as it may, the judgment in the suit was passed on 11.02.2015 and the petitioner came to know about the filing of the suit and its dismissal on 27.09.2021. Immediately, he applied for certified copies and obtained them to file an appeal. In that process delay of 2361 days was occurred in filing the appeal. The TRUST Association being a juristic person, it is represented by its Chairman duly elected, however persons claiming themselves as Chairman in collusion with others filed the suit O.S No.244/2006 and acted detrimental to the interest of TRUST Association. No prudent Chairman will keep quiet without filing appeal in time. In these

circumstances, the delay is neither willful nor wanton. Hence the delay of 2361 may be condoned.

3. Respondents 1 to 14 filed counter and opposed the petition *inter-alia* contending thus:

(a) It is stated that even by the time the petitioner claimed to have been elected as Chairman of TRUST Association, CBCNC in 2007, two other rival groups headed by TDS Kumar and Dasari Samuel, also have been claimed the office of petitioner TRUST Association of CBCNC which is evident from OS No.18/2009 on the file of I Additional District Judge, Visakhapatnam. Unless the said dispute is settled, none of them can claim a valid office and authority to represent CBCNC or its TRUST Association. There has never been a statutory recognition of the office of the petitioner at any point of time. In that view the petition is liable to be dismissed.

(b) So far as sufficient cause for condoning the delay is concerned, the reasons shown are not valid as they are blatantly false. The first reason shown is that the petitioner was not aware of filing of the suit OS No.244/2006 by Dasari Samuel. It is contended that the said reason is palpably false. OS 244/2006 was filed in the Court of I Additional district Judge, Visakhapatnam and it was used to be posted always with OS 18/2009 for a long period, that had been clandestinely referred with old number as OS 454/2006. Therefore, the question of pleading ignorance about OS 244/2006 is untenable. The second reason shown is that an IA was filed in AS No.132/2017 wherein the opposite party filed counter in which reference was made about OS 244/2006 and thereby the petitioner got the knowledge about the judgment in OS 244/2006. This reason is also palpably false for the reason that, as against the judgment in OS 18/2009, the present respondents filed AS 341/2017 on the file of this Court wherein the petitioner as 5<sup>th</sup> respondent actively contested and he even filed a counter to the additional evidence petition. The suit Os 244/2006 was referred a number of times in the synopsis filed in AS 132/2017, and AS 341/2017 on the file of this Court. Hence the petitioner cannot plead ignorance. Therefore, huge delay of about 7 years is not properly explained and the petition is liable to be dismissed.

4. Heard arguments of learned counsel for the petitioner Sri T.V. Jaggi Reddy and learned counsel for respondents Sri V.V. Ravi Prasad. Both the learned counsel reiterated their pleadings in their respective arguments.

5. The point for consideration is whether the petitioner could show sufficient cause to condone the delay of 2361 days in filing the appeal against the judgment dated 11.02.2015 in OS No.244/2006 on the file of I Additional District Judge, Visakhapatnam.

**6 POINT:** The responsibility of a party in explaining “sufficient cause” for delay in filing a legal proceeding and the approach of the Court in considering and evaluating the same etc. are no more *res integra* and Hon<sup>ble</sup> Apex Court has explicated the method and manner in which the term „sufficient cause” appearing in **Section 5 of Limitation Act** has to be appreciated.

(i) In **State of Karnataka v Y. Moideen Kunhi**<sup>1</sup> cited by learned counsel for the petitioner, the Apex Court observed thus:

**“22. The expression “sufficient cause” as appearing in Section 5 of the Limitation Act, 1963 (in short “the Limitation Act”) must receive a liberal construction so as to advance substantial justice as was noted by this Court in G. Ramegowda v. Special Land Acquisition Officer [(1988) 2 SCC 142 = AIR 1988 SC 897]. Paras 16-17 of the judgment reads as follows:**

“16. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross/purposes with it.

17. Therefore, in assessing what, in a particular case, constitutes „sufficient cause” for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have á little play at the joints”. Due recognition of these limitations on governmental functioning – of course, within reasonable limits – is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision making process. In the opinion of the High Court, the conduct of the law officers of the Government placed the Government in a

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<sup>1</sup> (2009) 13 SCC 192

predicament and that it was one of those cases where the mala fides of the officers should not be imputed to Government. It relied upon and trusted its law officers. Lindley, M.R. in **National Bank of Wales Ltd. In re** [LR (1899) 2 Ch 629 (CA)] observed, though in a different context

“...Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them, as well as by those below them, until there is reason to distrust them.”

**23.** Keeping in view the importance of questions of law which are involved we are inclined to condone the delay subject to payment of exemplary costs which we fix at rupees ten lakhs to be paid within a period of eight weeks to the respondents. The delay is condoned subject to the payment of the aforesaid amount as costs. After making the payment the receipt thereof shall be filed before this Court along with an affidavit. Only after the payment is made the special leave petitions shall be listed for admission. We make it clear that we have not expressed any opinion on the merits of the case.”

(ii) In **Sheo Raj Singh v. Union of India** cited by learned counsel for the petitioner, in an appeal filed against the order of High Court of Delhi allowing the petition filed U/s 5 of the Limitation Act by the Union of India, referring to its various earlier decisions, the Apex Court held as follows

**“41.** Having bestowed serious consideration to the rival contentions, we feel that the High Court’s decision to condone the delay on account of the first respondent’s inability to present the appeal within time, for the reasons assigned therein, does not suffer from any error warranting interference. As the aforementioned judgments have shown, such an exercise of discretion does, at times, call for a liberal and justice oriented approach by the courts, where certain leeway could be provided to the State. The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order of a lower court and thereby secure unholy gains, can hardly be ignored. Impediments in the working of the grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of the competing interests.”

(iii) The judgment in **Pundlik Jalam Patil (dead) by LRs v. Executive Engineer Jalgaon Medium Project** is cited by the respondents wherein the Apex Court observed thus:

“It is true when the State and its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for Governmental authorities. Limitation Act does not provide for a different period to the government in filing appeals or applications as such. It would be a different matter where the Government makes out a case where public interest was shown to have suffered

owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case if any such facts are pleaded or proved they cannot be excluded from consideration and those factors may go into the judicial verdict. In the present case, no such facts are pleaded and proved though a feeble attempt by the learned Counsel for the respondent was made to suggest collusion and fraud but without any basis. We cannot entertain the submission made across the Bar without there being any proper foundation in the pleadings.”

7. It should be noted that the above three cited decisions were rendered by Hon<sup>ble</sup> Apex Court in the context where the Government was a party seeking condonation of delay. It was observed that the expression “sufficient cause” must receive a liberal construction so as to advance substantial justice and ultimately the Court has to protect the public justice. The public justice cannot be rendered ineffective by skilful management of delay in the process of making challenge to the order which *prima facie* does not appear to be legally sustainable. The Apex Court while deprecating the delay caused by the state missionary, observed that it was a matter of concern that in very serious matters, action is not taken as required under law and the appeals/petitions are filed after a long lapse of time. It is a common grievance that it is done to protect unscrupulous litigant at the cost of public interest or a public exchequer. This stand is more noticeable where vast tracts of lands or large sums of revenue are involved. The Apex Court observed that in exercise of discretion does, at times, call for a liberal and justice oriented approach by the Courts, where certain leeway could be provided to the State. The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher Court to pronounce upon the legality and validity of an order of a lower Court and thereby secure unholy gains, which can hardly be ignored.

(a) As stated supra, the above decisions were rendered keeping in view the intra departmental lethargies or possible deliberate – delays by the State missionary. Hon<sup>ble</sup> Apex Court held that for doing substantial justice, depending upon the nature of the matter, delay petitions have to be pragmatically considered and decided. However, we are afraid, the above decisions will not be of avail to the petitioner as the Government is not a party – petitioner in this case. Hence the other decisions need to be perused.



8. (i) In **Dhiraj Singh (Dead) Through Legal Representatives v. State of Haryana** the Apex Court while considering the SLPs filed by the appellants against the order of the High Court refusing to condone the delay in filing the Letters Patent Appeals seeking enhanced compensation in land acquisition matters. In that context the Apex Court considered its earlier judgment in **Collector (LA) v. Katiji** wherein it was observed thus:

- “(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) „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.”

Considering the above judgment SLPs were allowed and delay was condoned.

9. While so, learned counsel for the respondent also cited two decisions which need to be scrutinized.

(i) In **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy** the Apex Court while dealing with the question whether the Div. Bench of High Court of Kolkata was justified in entertaining CAN No.365/2011 for condoning delay of 2449 days in ASTA No.10/2021 preferred against the interim order passed by learned single Judge. Referring to various decisions, the Apex Court culled out the following principles:

- (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that

these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

- (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
- (vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.
- (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
- (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.
- (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.
- (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.
- (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.
- (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

- (a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.
- (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.
- (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.”

(ii) In **Brijesh Kumar v. State of Haryana** cited by respondents the Apex Court considering several decisions including **Esha Bhattacharjee** (Supra 5) observed thus:

“10.The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.”

**10.** The jurimetrical jurisprudence that can be gained from the above judgments is that in dealing with the petitions filed U/s 5 of the Limitation Act, when the courts encountered a situation where substantial justice and technical considerations are pitted against each other, substantial justice shall be preferred to other when non-deliberate delay is found out from the facts and circumstances of the case on hand. There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with such applications, for, the courts are not supposed to legalise injustice but are obliged to remove injustice. In considering the delay condoning petitions, the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors. It is the fundamental principle that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total goby in the name of liberal approach. In that process, if the explanation offered is found concocted or

the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation. No one should get away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

It has now to be seen whether the delay in this case is condonable.

**11.** Shorn of lengthy and redundant details, the two main causes projected by the petitioner in his affidavit for a huge delay of 2361 days in preferring the appeal are:

- (i) the petitioner was not aware of the suit in OS No.244/2006 having been filed by Mr. Dasari Samuel and its result till recently;
- (ii) that, the petitioner filed certain interlocutory applications in the purported interlocutory applications in AS No.132/2017 and from the counter affidavits filed by me in the said IAs., the petitioner came to know about the dismissal of OS No.244/2006 on the file of the learned I Addl. District Judge, Visakhapatnam vide decree & judgment dated 11.02.2015 and that the petitioner immediately got the certified copies applied for the certified copies of the decree & judgment by 12.10.2021 and got the appeal filed and that in the process, the petitioner seeks condonation of delay of 2361 days.

The above two projected causes were severely remonstrated as false by the respondents in their counter. Hence they have to be scrutinized.

**12.** The first cause is concerned, it is the case of the petitioner that Dasari Samuel was not the Chairman of TRUST Association of CBCNC rather the petitioner herein was the Chairman and the said Dasari Samuel has no power or authority to file the suit OS No.244/2006. The petitioner was no aware of filing of the said suit till before filing the appeal with delay condonation petition. The petitioner in the second cause explained as to when he came to know about the filing of OS No.244/2006 by Dasari Samuel and its disposal. According to him, one TDS Kumar who also claiming himself as Chairman of TRUST Association of CBCNC filed OS 18/2009 on the file of I Additional District Judge, Visakhapatnam seeking injunction. In the said suit the petitioner herein was arrayed as defendant No.4 and he filed written statement and contested the suit claiming that he was the Chairman of TRUST Association of CBCNC. Ultimately, suit was dismissed. Defendants No.9 and 10 in that suit filed AS No.132/2017 before Common High Court of A.P. In the said appeal, the petitioner herein filed an IA seeking interim injunction restraining the appellants from making constructions in the suit

schedule property. Counter was filed in the said petition on 27.09.2021, wherein, incidentally it was mentioned about the filing of some writ petitions and OS 244/2006 by Dasari Samuel and dismissal of those matters. Then, upon perusal of the counter, the petitioner herein came to know about Dasari Samuel filing OS 244/2006 and its dismissal on 11.02.2015. He then applied for certified copies and filed the instant appeal, by which time, a delay of 2361 days was occasioned, which is neither willful nor wanton.

**13.** Be that as it may, the contention of respondents is that OS 18/2009 and OS 244/2006 which were pending on the file of Metropolitan Sessions Judge-cum-I Additional District Judge, Visakhapatnam used to be adjourned on the same dates and as the petitioner herein was arrayed as defendant No.4 in OS 18/2009, he was very much aware of the proceedings in the other suit i.e., OS 244/2006 since both the suits were pending in the same court and were posted simultaneously. The respondents filed copies of case status report of both the suits obtained from the trial Court. This contention is denied by the petitioner.

**14.** On a perusal of the case status report in OS 18/2009 and OS 244/2006, it is no doubt clear that both the suits were pending on the file of Metropolitan Sessions Judge-cum-I Additional District Judge, Visakhapatnam and they were adjourned simultaneously to same dates. The case status report would further show that OS 18/2009 was filed by TDS Kumar representing Baptist Churches of Northern Carcars in which the present petitioner is arrayed as 4<sup>th</sup> defendant whereas OS No.244/2006 was filed by Dasari Samuel representing TRUST Association of CBCNC. The petitioner herein was not a party in the said suit. In the backdrop of above facts, merely because the petitioner is a party-defendant in one suit, knowledge regarding other suit cannot be readily attributed to him merely because the other suit was also pending in the same court and being posted simultaneously. In the case status reports we do not find any docket order to the effect that one suit should be posted along with other suit. In the absence of such mentioning, merely because both suits were simultaneously posted, no knowledge can be inferred and attributed to the petitioner, particularly when the petitioner is not a party in OS No.244/2006.

**15.** The next contention of the respondents to impute his knowledge regarding filing and pendency of OS 244/2006 is that, the petitioner herein engaged the services of Sri M. Ravi, Advocate to file copy application No.10008/2021 for obtaining certified copy of decree and judgment in OS

244/2006 to file the instant appeal. The aforesaid Advocate was none other than the counsel who filed OS 244/2006 on behalf plaintiff Dasari Samuel. The respondents thus contend that the same counsel extended services for the plaintiff in OS 244/2006 and also for the petitioner herein which shows that there was a collusion between Dasari Samuel as well as the present petitioner and hence it can be inferred that the petitioner had prior knowledge about the filing of suit OS 244/2006. The respondents filed copy of counter foil and challan for payment of court fee in CA No.10008/2021 and also the copy of CA No.10008/2021 to show that Sri M. Ravi, learned Advocate filed the copy application on behalf of the petitioner herein.

**16.** On perusal of the copies of challan and CA No.10008/2021, we are unable to countenance the argument of the learned counsel for respondents. Merely because the services of Sri M. Ravi, Advocate were utilized by the petitioner in 2021 to obtain certified copies of judgment and decree, which was long after the disposal of OS 244/2006 in 2015, no collusion between Dasari Samuel and the petitioner can be inferred.

**17.** Thus at the out-set we find the reason shown by the petitioner for the delay in filing appeal though a long one, as plausible and believable to condone. It is the contention of the petitioner that Dasari Samuel was not the Chairman of TRUST Association of CBCNC and he has no right to alienate the properties to the defendants in OS No.244/2006. Thus there involves substantial question of facts and law in this matter. As such, going by the principles enunciated supra, when substantial justice and technical considerations are pitted against each other, substantial justice has to be preferred, meaning thereby, the delay though a long one has to be condoned so as to decide the appeal on merits rather than stifling it at the threshold.

**18.** Accordingly the petition is allowed and delay of 2361 days in filing the appeal is condoned.

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