

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

CIVIL REVISION PETITION NO: 19 of 2023

VYASYARAJU MAHESWARA RAO, S/O SATYANARAYANA RAJU, AGED 51 YEARS, HINDU, RESIDENT OF DOOR NO.10-3-9, BONTHAVARI STREET, SRIKAKUAM.

... PETITIONER

Versus

BOYINA GOVINDA RAJULU, S/O LATE BOYINARAMANAMURTHY, HINDU, AGED 68 YEARS, RESIDENT OF VYSYA VEEDHI, KOTABOMMALI VILLAGE AND MANDAL, SRIKAKULAM DISTRICT AND OTHERS

... RESPONDENTS

DATE OF ORDER PRONOUNCED : **16.06.2026**

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

1. Whether Reporters of Local Newspapers may be allowed to see the order? : Yes/No
2. Whether the copy of order may be marked to Law Reporters/Journals? : Yes/No
3. Whether His Lordship wish to see the fair copy of the order? : Yes/No

SUBBA REDDY SATTI, J

*** HONOURABLE SRI JUSTICE SUBBA REDDY SATTI**

CIVIL REVISION PETITION NO: 19 of 2023

% 16.06.2026

Civil Revision Petition No: 19 of 2023

VYASYARAJU MAHESWARA RAO, S/O SATYANARAYANA RAJU, AGED 51 YEARS, HINDU, RESIDENT OF DOOR NO.10-3-9, BONTHAVARI STREET, SRIKAKUAM.

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... RESPONDENTS

! Counsel for Petitioner : Smt. T.V. Sri Devi, learned counsel

^ Counsel for Respondents : Sri Ch Praveen Kumar, learned counsel
Representing Sri Vinod Kumar Tarlada,
Learned counsel

< Gist :

> Head Note :

? Cases referred :

- 1) 2026 SCCR 45
- 2) 2020 (1) ALT (SC) 294 (F.B.)

This Court made the following:

Date of reserved for orders : ---

Date of pronouncement : 16.06.2026

Date of uploading : 30.06.2026

APHC010698702025



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3208]

TUESDAY, THE 16th DAY OF JUNE 2026

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

CIVIL REVISION PETITION NO: 19/2023

Between:

1.VYASYARAJU MAHESWARA RAO, S/O SATYANARAYANA RAJU,
AGED 51 YEARS, HINDU, RESIDENT OF DOOR NO.10-3-9,
BONTHAVARI STREET, SRIKAKUIAM.

...PETITIONER

AND

1.BOYINA GOVINDA RAJULU, S/O LATE BOYINARAMANAMURTHY,
HINDU, AGED 68 YEARS, RESIDENT OF VYSYA VEEDHI,
KOTABOMMALI VILLAGE AND MANDAL, SRIKAKULAM DISTRICT.

2.MALLINA SATYAVATHI, (DIED).

3.MALLINA LAXMI, W/O MALLINA PHANINDRANADH, HINDU, AGED
41 YEARS, R/O PLOT NO.84, THIRD LINE, PN COLONY,
SRIKAKULAM TOWN AND DISTRICT.

4.JAMI BALA BHASKARARAO, (DIED). (RESPONDENTS 2 TO 4 ARE
NOT NECESSARY IN THIS C.R.P HENCE GIVEN UP).

...RESPONDENT(S):

Petition under Article 227 of the Constitution of India, praying that in the
circumstances stated in the grounds filed herein, the High Court may be

pleased to set aside the Order dated 30.03.2022 passed in I.A.No.19 of 2021 in O.S.No. 32 of 2016 in the Court of the III Additional District Judge Cum Family Court at Srikakulam and pass

IA NO: 1 OF 2023

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 grant stay of all further proceedings in O.S.No.32 of 2016 in the court of the III Additional District Court Cum Family Court at Srikakulam pending the disposal of Civil Revision Petition and pass

IA NO: 2 OF 2023

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 extend the stay granted on 05.01.2023 and extended from time to time till 27.03.2023 in C.R.P.No. 19 of 2023 until further orders and pass

Counsel for the Petitioner:

1.T V SRI DEVI

Counsel for the Respondent(S):

1.VINOD KUMAR TARLADA

The Court made the following order :

Heard Smt. T.V. Sridevi, learned counsel for the petitioner, and Sri Ch. Praveen Kumar, learned counsel representing Sri Vinod Kumar Tarlada, learned counsel for respondent No.1.

2. Plaintiff No.2 in the suit O.S.No.32 of 2016 on the file of the learned III Additional District Judge –cum- Family Court, Srikakulam, filed the above Civil Revision Petition (C.R.P.) under Article 227 of the Constitution of India, assailing the docket order, dated 30.03.2022, in I.A.No.19 of 2021.

3. For the sake of convenience, the parties to this C.R.P. are referred to as per their array in the suit.

4. Plaintiffs, two in number, filed the above suit to declare three registered documents, dated 11.05.2012, executed by defendant No.1 in favour of defendants 2 and 3, as null, void and unenforceable; for specific performance of the agreement of sale; and in alternative for refund of advance amount received by defendant No.1 and recovery of compensation amount of Rs.1,00,00,000/- etc.,

5. In the suit, defendant No.1 was set ex parte on 29.08.2016. Later, issues were framed on 04.07.2017. Subsequently, defendant No.2 died, and no steps were taken. Initially, the suit against defendant No.2 was abated. Later, the legal representative of defendant No.2 was brought on record.

6. Subsequently, defendant No.1 filed I.A.No.19 of 2021 under Order IX Rule 7 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') to set aside the ex parte order, dated 29.08.2016.

7. In the affidavit filed in support of the said petition, it was contended, *inter alia*, that the suit was posted to 19.09.2019 for appearance; that the suit was posted to 03.01.2020 for filing of written statement of defendant No.1; that defendant No.1 could not appear before the Court as he was suffering from liver disease and underwent surgery for liver transplantation and thus, prayed to set aside the ex-parte order, dated 29.08.2016.

8. A counter-affidavit was filed by plaintiff No.2. It was contended, *inter alia*, that defendant No.1 filed an application on 22.08.2016 seeking extension of time to file a written statement. The suit was posted to 29.08.2016, on which date, defendant No.1 was set ex parte. The time stipulated for filing a written statement elapsed long ago in 2016, and defendant No.1 failed to

produce a medical record in support of his contention. Eventually, prayed to dismiss the application.

9. The trial Court, by docket order, dated 30.03.2022, allowed the petition, aggrieved by which the above C.R.P. was filed.

10. Learned counsel for the petitioner/plaintiff No.2 would submit that no reasons were assigned by the trial court while allowing the petition. She would submit that the written statement filed by defendant No.1 ought not to have been accepted by the trial Court since the statement was filed beyond the period prescribed in C.P.C.

11. Per contra, learned counsel for respondent No.1/defendant No.1 supported the order passed by the trial Court.

12. The point for consideration is:

“Whether the docket order, dated 30.03.2022 in I.A.No.19 of 2022 in O.S.No.32 of 2016, suffers from any illegality warranting interference?”

13. This Court called for the entire docket proceedings in O.S.No.32 of 2016, through the registry. The docket proceedings were forwarded, and a printout of the same is placed before the Court.

14. Initially, an interim order was granted in C.R.P. on 05.01.2023, and the same was extended on two occasions i.e. on 02.02.2023 and 28.02.2023, for a period of four weeks on each occasion. Thereafter, the interim order was not extended. Thus, the stay expired on 28.03.2023.

15. However, a perusal of the docket proceedings discloses that the suit was adjourned from time to time on the ground that stay is pending. At this

stage, this court is not going into that aspect, since this court is deciding the revision itself on merits.

16. As seen from the docket proceedings, defendant No.1 filed vakalat, however, he could not file a written statement by 22.08.2016. The docket proceedings, dated 22.08.2016, read as follows:

“Written Statement of D1 not filed, and extension petition is filed and allowed. Time granted till 29.08.2016 for written statement by D1 to D3, call on 29.08.2016.”

17. The trial Court, on 29.08.2016, recorded the docket as follows:

“Written statement by D1 not filed. D1 called absent and set exparte. For written statements by D2 and D3, call on 15.09.2016.”

18. Whether non-filing of the written statement, after the advocate appeared on behalf of the defendant upon filing of a vakalat, the court below is justified in setting the defendant exparte?

19. Let this court examine the scheme under the Civil Procedure Code regarding the appearance of the defendant and non-filing of the written statement within the time stipulated.

20. Order IX Rule 6 CPC, which is relevant, is extracted here.

“Procedure when only plaintiff appears: -

(1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—

(a) When summons duly served.—If it is proved that the summons was duly served, the Court may make an order that the suit shall be heard ex parte;

(b) When summons not duly served.—If it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

(c) When summons served but not in due time.—If it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.”

21. Thus, a plain reading of the provision, especially Rule 6(1)(a) of Order IX, after receipt of the summons, if the defendant fails to appear, the court can set the defendant ex-parte and proceed further with the suit. If the court sets the defendant ex parte, then the defendant files an application under Order IX Rule 7 seeking to set aside the ex parte order.

22. Once an advocate appears and files a vakalat on behalf of the party, Order III CPC comes into play. Order III Rule 4(2) deals with the power of the Court to determine the vakalat.

23. Order III Rule 4(2), which is relevant, extracted.

“Every such appointment shall be filed in Court and shall, for the purposes of sub-rule (1), be deemed to be in force **until determined with the leave of the Court** by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.”

Explanation: For the purposes of this sub-rule, the following are deemed to be proceedings in the suit:

- (a) An application for review of a decree or order in the suit;
- (b) An application under Sections 144 or 152 of this code, in relation to any decree, or order made in the suit;
- (c) An appeal from any decree or order in the suit; and
- (d) An Application or act for the purpose of obtaining copies of the documents or return of documents produced or filed in the suit or of obtaining a refund of monies paid into the court in connection with the suit.

24. Thus, a plain reading of the provision makes it clear that unless and until the Court terminates the vakalat in the circumstances noted, the vakalat filed by the advocate continues.

25. After filing a vakalat on behalf of the defendant, if a written statement was not presented or filed within the time stipulated either in Order V Rule 1 or Order VIII Rule 1 CPC, then the Court shall adhere to the procedure envisaged under Order VIII Rule 10.

26. Order VIII Rule 10 CPC, which is relevant, is extracted hereunder:

10. Procedure when party fails to present written statement called for by Court :- Where any party from whom a written

statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.”

27. A conjoint reading of all the provisions noted supra, discloses that once a defendant appears after service of summons and a vakalat is filed, unless the vakalat is terminated by the Court, the advocate who filed the vakalat shall be deemed to be continued and represent the party. If a written statement is not filed within the time stipulated after appearance, the proper course would be to forfeit the right to file a written statement and proceed further with the suit.

28. Of course, this court noticed that in several civil cases, the learned advocates, whenever a party is not in touch with the advocate, on an interlocutory application being filed by the other side, make an endorsement to issue notice to the party, without the vakalat terminated by the Court. The said practice being adopted or in vogue is not in accordance with the scheme referred to supra.

29. In the case at hand, an advocate appeared for defendant No.1 and in fact, sought extension of time to file a written statement; however, no written statement was filed. In such an event, the docket order of the trial court to set defendant No.1 ex parte is contrary to the scheme discussed supra. This court is reminded of a Latin maxim, ‘Actus Curiae Neminem Gravabit,’ an act of the Court shall prejudice no one.

30. In the case at hand, the course adopted by the trial Court in setting defendant No.1 ex parte, despite the vakalat filed, on the ground of non filing

of written statement, without forfeiting the right to file a written statement, is impermissible.

31. Let the court now consider the conduct of the defendant No.1 vis-à-vis the averments in the affidavit filed in support of the I.A. As noted supra, defendant No.1 was set ex parte on 29.08.2016. The averments in paras 2 and 3 of the affidavit are factually incorrect. Of course, in the prayer, defendant No.1 requested the Court to set aside the ex-parte order, dated 29.08.2016, and the trial Court allowed the application.

32. The contention raised by the learned counsel for the petitioner that no reasons were assigned while allowing the petition, though it appears merit consideration, one should not be oblivious that procedural laws are handmaidens of justice. In this connection, it is profitable to refer to the observations in a recent judgement of the Apex Court in **Anvitha Auto Works Vs Aroush Motors**¹, wherein the Hon'ble Apex Court observed that the object of procedural rules is to advance the cause of justice and not to thwart it. When rigid adherence to the technicalities of procedure causes injustice, courts have to come to the rescue by adopting a liberal approach. When substantial justice is at stake, technicalities must give way to ensure that the litigant is afforded sufficient opportunity to defend the case.

33. The suit was filed seeking specific performance. In fact, defendant No.1 filed a written statement and the same was accepted by the Court. For many reasons, the trial in the suit, has not been commenced to date. The trial court, in the facts and circumstances, should have awarded costs to the plaintiff. Remanding the matter to the trial Court with a direction to pass a fresh order will further procrastinate the suit proceedings. This Court is not inclined to

¹ 2026 SCCR 45

interfere with the order passed by the trial Court. The suit was filed in 2016, and for ten years, there was no progress in the trial.

34. The other contention of the learned counsel for the petitioner is that the written statement of defendant No.1 cannot be received.

35. The docket proceeding recorded by the trial Court on 30.03.2022, reads as follows:

“I.A.19/2021 is allowed setting aside the exparte order dt.29.08.2016 against the 1st defendant. Written statement of 1st defendant filed.

IA 413/18 allowed by setting aside the abatement of suit against 2nd defendant.

IA 414/18 is allowed permitting the petitioner to implead the Mallina Ramakrishna and Mallina Phanindranadh as defendants 4 and 5 in the plaint with consequential amendments.

Hence, the suit is adjourned for carrying out amendment and for filing neat copy of plaint.

Call on 07.04.2022.”

36. As noted supra, the trial court should have imposed appropriate costs, keeping in view the principle that a person at fault shall not be rewarded without compensating the adversary.

37. The filing of the neat copy of the plaint was recorded by docket proceedings, dated 09.05.2022. As seen from the record, the docket order was passed on 30.03.2022, and the revision petitioner applied for a certified copy on 07.07.2022, which was made ready on 12.07.2022 and delivered to

the petitioner on 15.07.2022. Thereafter, a revision was filed in December, 2022. An interim order was granted initially on 05.01.2023.

38. The decision reported in **Desh Raj v. Balkishan (D) through Proposed LR Ms.Rohini²**, relied upon by the learned counsel for the petitioner, may not apply to the facts of the case.

39. Given the discussion supra and facts and circumstances of the case, this Civil Revision Petition is disposed of without modifying or interfering with the order under revision, directing defendant No.1 in the suit i.e. respondent No.1 herein to pay costs of Rs.25,000/- to plaintiff No.2 i.e. revision petitioner herein within four weeks from today and file the receipt before the trial Court. If the plaintiff declines to receive the costs, defendant No.1 shall pay costs to the District Legal Services Authority, Srikakulam District and file a memo before the trial Court.

40. Since the suit is of the year 2016, the learned trial Court shall expedite the trial, in view of the circular issued by this Court vide R.O.C.No.560/OP/CELL/ 2022, dated 23.11.2022 and dispose of the same as expeditiously as possible, strictly in accordance with law.

As a sequel, all the pending miscellaneous applications in this case shall stand closed.

JUSTICE SUBBA REDDY SATTI

Date : 16.06.2026

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Whether the order is :

Speaking Yes/No / Recorded Yes/No

Reportable Yes/No / Non-Reportable Yes/No

² 2020 (1) ALT (SC) 294 (F.B.)

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

CIVIL REVISION PETITION No.19 of 2023

Date : 16.06.2026

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