

**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**  
**THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**

**APPEAL SUIT NO.223 OF 2025**

**ORDER:** (per Hon'ble Sri Justice Ravi Nath Tilhari)

On 03.07.2025, we passed the following order:

“ I.A.No.1 of 2025 has been filed by the appellants/defendant Nos.1 & 2 for condonation of delay of 950 days in filing the appeal.

2. The suit was filed by the plaintiff/respondent for recovery of money.

3. The appeal has been filed against the decree dated 11.04.2022 passed in O.S.No.11 of 2018 on the file of V Additional District & Sessions Judge, East Godavari District, Rajamahendravaram.

4. In the affidavit filed in support of I.A.No.1 of 2025 seeking condonation of delay, the cause as stated in para-6 is as follows:

“6. It is submitted that the petitioners/defendants, who are the proprietors, and the respondent/plaintiff, have instituted the alleged suit based solely on a copy of the ledger to recover the amount, including excessive interest. **However, no notices were served to the petitioners/defendants, nor were summons issued to them. The petitioners/defendants only became aware of the attachment of their property in the executing court pursuant to E.P.No.145 of 2022, on the file of the Hon'ble Principal Sub Judge. Subsequently, the petitioners/defendants filed an objection and now seek to challenge the decree, which was passed as an ex parte order.**”

5. Learned counsel for the appellants/applicants had argued that summons were not served and consequently, the appellants had no knowledge of the suit proceedings and the ex-parte decree. The appellants came to know about the decree from the proceedings in E.P.No.145 of 2022 filed in the state of Kerala.

6. Considering inter-alia the aforesaid submission, on 26.06.2025, this Court passed the following interim order:

“This appeal was by the defendants in O.S.No.11 of 2018 filed by the plaintiff/respondent in the Court of V Additional District and Sessions Judge, East Godavari, Rajamahendravaram. The said suit for recovery of amount with interest has been decreed on 11.04.2022.

2. Learned counsel for the appellants submits that the appellants had no knowledge about the said case and the notice. Consequently, they could not appear to contest the matter by filing the written statement. In para-6 of the affidavit filed in support of I.A.No.1 of 2025, which is for condonation of delay of 950 days in filing the appeal, it is inter alia submitted that ‘however, no notices were served to the petitioners/defendants, nor were summons issued to them. The petitioners/defendants only became aware of the attachment of their

property in the executing court pursuant to E.P.No.145 of 2022, on the file of the Hon'ble Principal Sub Judge'.

3. Learned counsel for the appellants further submits that the dispute being commercial dispute of the specified value, this suit could not have been filed in the Court of the Additional District and Sessions Judge, East Godavari, Rajamahendravaram, but was cognizable by the Special Court under the Commercial Courts Act.
4. However, a perusal of the judgment under challenge in para-4 shows that it mentions that 'despite receipt of summons, the defendants No.1 and 2 did not choose to enter their appearance in the suit and were set ex parte.'
5. **Though the appeal has been filed beyond limitation, and I.A.No.1 of 2025 is filed for condonation of delay to which learned counsel for the respondent prays time to file objection, but in view of the further submission of the appellants counsel that in the Execution Court the date fixed is 04.07.2025, we call for the report from the Court concerned with respect to the service of notice on the defendants 1 and 2 in the suit i.e. the appellants herein supported with copy of the relevant records/orders on service passed in the suit .**
6. List the matter on 03.07.2025.
7. By that date, the objections if any to I.A.No.1 of 2025 may also be filed by Sri S.Siva Bhami Reddy, learned counsel appearing for the plaintiff/respondent. 8. Let a copy of this order be sent to the Court concerned without delay to submit report before the date fixed."
7. Pursuant to the said order, the V Additional District Judge, East Godavari, Rajamahendravaram submitted a report dated 30.06.2025 submitting inter-alia that the summons of the defendant Nos.1 & 2 in OS.No.11 of 2018, issued through registered post, were returned unserved as "addressee left". The summons issued through Court by that date were not returned. So the suit was posted to 26.09.2018. On 26.09.2018 vakalat was filed by Sri N.Anoopu Kumar and Smt.K.Andal, advocates on behalf of the defendant Nos.1 & 2. The case was posted to 11.12.2018 for filing of written statements of defendant Nos.1 & 2. Statutory time was granted for filing written statement from 26.09.2018 to 16.04.2019, but the defendant Nos.1 & 2 failed to file their written statement within a statutory period. The defendants were called absent and there was no representation on 16.04.2019. Hence, defendant Nos.1 & 2 were set ex-parte on 16.04.2019. The suit was posted to 24.06.2019 for plaintiff evidence.
8. From the aforesaid report of the V Additional District Judge, Rajamahendravaram, it is evident that the defendant Nos.1 & 2 appeared in the suit. They filed vakalat and time was granted to file written statement but they did not file any written statement. They did not appear on 16.04.2019 and were set exparte.
9. Consequently, the ground as stated for condonation of delay that the summons were not served, is not correct and is contrary to the record.

10. With respect to the jurisdiction as per the Report, the entire record was submitted to the Special Judge, Commercial Court, Visakhapatnam. From the said Court the file was again returned to V Additional District and Sessions Court, Rajamahendravaram on 01.02.2020, as the offer and acceptance between the parties to the suit in respect of supply of goods was in the nature of agreement and did not have any legal basis to attract the jurisdiction of the Commercial Court.

11. We do not find force in the submission advanced. The cause shown is not sufficient to condone the delay. We reject I.A.No.1 of 2025.

12. Consequently, appeal is also dismissed as barred by limitation.

13. For filing such affidavit containing para-6, as noted above, and not disclosing correct facts but suppressing the material facts and setting up a case of no service of summons, whereas the defendants/appellants had engaged the counsel in the suit; were granted time to file written statement and were set exparte, is an act and conduct which cannot be ignored by us.

14. We issue notice to the appellants/applicants to show cause as to why the proceedings be not drawn against them for suppression of material facts and for trying to mislead the Court.

15. At this stage, learned counsel for the appellants/applicants submits that in para-4 of the judgment the learned Trial Court recorded that "despite receipt of summons, the defendant Nos.1 & 2 did not choose to enter their appearance in the suit and were set exparte". So, para-6 was stated in the affidavit.

16. Prima -facie we are not satisfied. Para-4 of the judgment clearly mentions 'despite service of summons' which shows service of summons. Further, "the defendant did not choose to enter their appearance in suit and they were set exparte" reveals about the defendants' non-appearance on the date they were set exparte.

17. Let the affidavit be also filed by the learned counsel showing the efforts made to ascertain correct facts, from the record of the learned Trial Court before filing the appeal and application with affidavit containing incorrect facts, in case of any misunderstanding of facts.

18. Post on 31.07.2025 for the aforesaid purposes.

19. The Registrar (Judicial) to take necessary steps."

2. Vide order dated 31.07.2025 aforesaid, I.A.No.1 of 2025, which was for condonation of delay of 950 days in filing of the appeal, was rejected and the appeal was also dismissed as barred by limitation and notice was also issued to the

appellants/applicants to show cause as to why the proceedings be not drawn against them for suppression of material facts and for trying to mislead the Court.

3. Pursuant to the order dated 03.07.2025, the 2<sup>nd</sup> appellant has filed the affidavit. Para-8 of the affidavit reads as under:

*“8. It is respectfully submit that, I came to know that one of my well-wisher was engaged the above said advocates as my counsel before the trial court and the same was not in my knowledge, therefore I given instructions to my counsel that no notice/summons were served and not engaged any advocate. That the above said facts are not known to me and it is only came to know after the order passed by this Hon’ble Court dt.03.07.2025. That there is no suppression of facts by my counsel and my counsel prepared based on my instructions and instructions of our lower court advocates namely Mr.Anand and Hari Priya. I am hereby tendering my unconditional apology before this Hon’ble Court and this Hon’ble Court may accept my apology and close all further proceedings. Hence this affidavit.”*

4. We are not satisfied with the explanation offered in para-8 of the affidavit of the 2<sup>nd</sup> appellant. The same is an afterthought. As per the said para also, it is evident that the counsel was engaged and vakalat was filed in the suit though it is submitted that the same was not in the knowledge of the appellants. The counsel could not be engaged without the appellants signing the vakalat. We cannot accept the explanation that the counsel was engaged without the knowledge of the appellants.

5. There is clear suppression of fact and misstatement with respect to the summon and no knowledge of the suit proceedings. The appellants have abused the process of this Court.

6. ***In Oswal Fats & Oils Ltd. v. Additional Commissioner (Administration), Bareilly Division, Bareilly***<sup>1</sup>, the Hon'ble Apex Court held that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the Court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the Court not only has the right but a duty to deny relief to such person.

7. In ***Kishore Samrite v. State of Uttar Pradesh***<sup>2</sup>, the Hon'ble Supreme Court held that no litigant can play "hide and seek" with

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<sup>1</sup> (2010) 4 SCC 728

<sup>2</sup> (2013) 2 SCC 398

the courts or adopt “pick and choose”. True facts ought to be disclosed as the court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the court is duty-bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of court.

8. In ***Sciemed Overseas Inc. v. Boc India Limited***<sup>3</sup>, the Hon'ble Apex Court, referring to ***Muthu Karuppan v. Parithi Ilamvazhuthi***<sup>4</sup>, in which it was held that the filing of a false affidavit should effectively be curbed with a strong hand, held that though the observation was made in the context of contempt of court proceedings, but the view expressed must be generally endorsed to preserve the purity of the judicial proceedings.

9. The appellants have abused the process of the Court and have not approached this Court with clean hands.

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<sup>3</sup> (2016) 3 SCC 70

<sup>4</sup> ((2011) 5 SCC 496 : (2011) 2 SCC (Cri) 709)

10. While rejecting the explanation offered, we impose costs of Rs.50,000/- (Rupees Fifty thousand only) on the appellants to be paid by the appellants.

11. The learned counsel for the appellants has also filed her affidavit, stating *inter alia* in para 8 as under:

*“8. It is respectfully submit that, I am being a counsel I drafted the contents of the affidavit only based on the instructions given by the Petitioners and based on the Judgment and Decree passed in O.S.No. 11 of 2018 dt.11.04.2022 particularly from Para No.4 that despite receipt of summons the Defendants No.1 & 2 did not choose to enter their appearance in the suit and were set-exparte. Further the Petitioners and the briefing counsel namely Mr.K. Anand and K. Hari Priya stated that they did not engaged any counsel and they did not received any summons as such under their instructions, I prepared the said affidavit and filed before this Hon'ble Court. That being a counsel, I did not suppress any material facts and prepared the affidavit and filed before this Hon'ble Court. That I only filed the affidavit on the instructions of clients and briefing counsel as stated above, I have no personal claim in the present case. I was acted only on the instructions as stated above and not invited any averments on my own to mislead this Hon'ble Court and suppressed any material facts.”*

12. Considering para 8 of the affidavit of the counsel and also that the 2<sup>nd</sup> appellant has in his affidavit stated that the instructions were given to the appellants' counsel, (which are found to be incorrect), we are not passing any order against the counsel, but would observe that the appellants' counsel, must have been careful in drafting and with respect to the instructions provided to her, in view of what was written in the judgment of the Trial Court, she ought to have made efforts to verify the

correctness of instructions before filing the appeal and the application.

13. In ***J.S.Jadhav v. Mustafa Haji Mohamed Yusuf***<sup>5</sup>, the Hon'ble Apex Court observed and held that advocacy is not a craft but a calling; a profession wherein devotion to duty constitutes the hallmark. Sincerity of performance and earnestness of endeavour are the two wings that will bear aloft the advocate to the tower of success. Given these virtues other qualifications will follow of their own account. This is the reason why legal profession is regarded to be a noble one. But it cannot be allowed to become a sorriest of trades. It will be useful to quote what Sharaswood said of this profession. It is apt to refer para (8) of ***J.S.Jadhav***(supra), in which the Hon'ble Apex Court quotes what Sharaswood said of this profession:

***“8. Advocacy is not a craft but a calling; a profession wherein devotion to duty constitutes the hallmark. Sincerity of performance and earnestness of endeavour are the two wings that will bear aloft the advocate to the tower of success. Given these virtues other qualifications will follow of their own account. This is the reason why legal profession is regarded to be a noble one. But it cannot be allowed to become a sorriest of trades. It will be useful to quote what Sharaswood said of this profession:***

*“A lawyer, without the most sterling integrity, may shine for a while with meteoric splendour; but his light will soon go out in blackness of darkness. It is not in every man's power to rise to eminence by distinguished abilities.*

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<sup>5</sup> (1993)2 SCC 562



*It is not in every man's power, with few exceptions, to attain respectability, competence, and usefulness. The temptations, which beset a young man in the outset of his professional life, especially if he is in absolute dependence upon business for his subsistence, are very great. The strictest principles of integrity and honor are his only safety. Let him begin by swerving from truth or fairness, in small particulars, he will find his character gone — whispered away, before he knows it. Such a one may not indeed be irrecoverably lost; but it will be years before he will be able to regain a firm foothold. There is no profession in which moral character is so soon fixed as in that of the law; there is none in which it is subjected to severer scrutiny by the public. It is well that it is so. The things we hold dearest on earth, our fortunes, reputations, domestic peace, the future of those dearest to us, nay, our liberty and life itself, we confide to the integrity of our legal counsellors and advocates. Their character must be not only without a stain, but without suspicion. From the very commencement of a lawyer's career, let him cultivate above all things, truth, simplicity and candor. They are cardinal virtues of a lawyer. Let him always seek to have a clear understanding of his object : be sure it is honest and right and then march directly to it. The covert, indirect and insidious way of doing anything, is always the wrong way. It gradually hardens the moral faculties, renders obtuse the perception of right and wrong in human actions, weighs everything in the balance of worldly policy, and ends most generally, in the practical adoption of the vile maxim, 'that the end sanctifies the means'."*

*Therefore an exacting standard is what is expected of an advocate."*

14. In a different context i.e. professional misconduct, which we are not observing in the present case, the Hon'ble Apex Court in **J.S.Jadhav**(supra) referred to the judgment in **M.Veerabhadra Rao v. Tek Chand**<sup>6</sup>, in which *inter alia*, it was held that the central function that the legal profession must perform is nothing less

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<sup>6</sup> 1984 Supp SCC 571

than the administration of justice. We reproduce para(9) of

**J.S.Jadhav**(supra) as under:

*“9. This Court has taken the view in M. Veerabhadra Rao v. Tek Chand as to how much in such a case professional misconduct has to be dealt with. In that case, the advocate committed forgery by attesting false affidavits which was considered to be a serious misconduct. This Court pointed out the duties of the members of the bar in the following passage : (SCC pp. 587-88, para 30)*

***“Legal profession is monopolistic in character and this monopoly itself inheres certain high traditions which its members are expected to upkeep and uphold.*** Members of the profession claimed that they are the leaders of thought and society. In the words of Justice Krishna Iyer in *Bar Council of Maharashtra v. M.V. Dabholkar*<sup>2</sup> the role of the members of the Bar can be appreciated. He said:

*“The Bar is not a private guild, like that of “barbers, butchers and candlestick-makers” but by bold contrast, a public institution committed to public justice and pro bono publico service. The grant of a monopoly licence to practice law is based on three assumptions : (1) There is a socially useful function for the lawyer to perform, (2) the lawyer is a professional person who will perform that function, and (3) his performance as a professional person is regulated by himself and more formally, by the profession as a whole. The central function that the legal profession must perform is nothing less than the administration of justice (‘The Practice of Law is a Public Utility’ — ‘The Lawyer, the Public and Professional Responsibility’ by F. Raymond Marks et al — Chicago American Bar Foundation, 1972 pp. 288-289). A glance at the functions of the Bar Council, and it will be apparent that a rainbow of public utility duties, including legal aid to the poor, is cast on these bodies in the national hope that the members of this monopoly will serve society and keep to canons of ethics befitting an honourable order. If pathological cases of member*

*misbehaviour occur, the reputation and credibility of the Bar suffer a mayhem and who, but the Bar Council, is more concerned with and sensitive to this potential disrepute the few black sheep bring about? The official heads of the Bar, i.e. the Attorney-General and the Advocates-General too are distressed if a lawyer "stoops to conquer" by resort to soliciting, touting and other corrupt practices.'*

*If these are the high exceptions of what is described as a noble profession, its members must set an example of conduct worthy of emulation. If any of them falls from that high expectation, the punishment has to be commensurate with the degree and gravity of the misconduct."*

15. In **K.Anjinappa v. K.C.Krishna Reddy and another**<sup>7</sup>, at para No.29, it was held as under:

"29. In **O.P. Sharma v. High Court of Punjab & Haryana**<sup>8</sup>, this Court has observed as under:

*"39. An advocate should be dignified in his dealings to the court, to his fellow lawyers and to the litigants. He should have integrity in abundance and should never do anything that erodes his credibility. An advocate has a duty to enlighten and encourage the juniors in the profession. An ideal advocate should believe that the legal profession has an element of service also and associates with legal service activities. Most importantly, he should faithfully abide by the standards of professional conduct and etiquette prescribed by the Bar Council of India in Chapter II, Part VI of the Bar Council of India Rules."*

16. Let the costs be deposited by the appellants within a period of one month before the **Andhra Pradesh State High Court Legal Services Committee, A.P.High Court.**

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<sup>7</sup> (2022) 17 SCC 625

<sup>8</sup> (2011) 6 SCC 86

17. Any further action pursuant to the order dated 03.07.2025 is not required.

18. The Registrar General to place on record the report of compliance of this order by the appellants.

19. Let a copy of this order be sent to the learned Trial Court and to the ***Andhra Pradesh State High Court Legal Services Committee.***

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RAVI NATH TILHARI, J

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MAHESWARA RAO KUNCHEAM, J

Date: 31.07.2025

**Note:**

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**\*THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI  
THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**

**+ APPEAL SUIT NO.223 OF 2025**

**% Dated: 31.07.2025**

# 1. A.S.Traders, represented by it's Proprietor  
A.Safar Ali

2. A.Safar Ali ... Appellants

*and*

\$ M.G.R.Rice Industries, Polamuru ..... Respondent

! Counsel for the Petitioner : Ms.Kalla Tulasi Durgamba

^ Counsel for the Respondent : Sri S.Siva Bhami Reddy.S

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? Cases referred :

<sup>1</sup> (2010) 4 SCC 728

<sup>2</sup> (2013) 2 SCC 398

<sup>3</sup> (2016) 3 SCC 70

<sup>4</sup> ((2011) 5 SCC 496 : (2011) 2 SCC (Cri) 709)

<sup>5</sup> (1993)2 SCC 562

<sup>6</sup> 1984 Supp SCC 571

<sup>7</sup> (2022) 17 SCC 625

<sup>8</sup> (2011) 6 SCC 86

**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**  
**THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**  
**APPEAL SUIT NO.223 OF 2025**

1. A.S.Traders, represented by it's Proprietor  
A.Safar Ali

2. A.Safar Ali ... Appellants

*and*

\$ M.G.R.Rice Industries, Polamuru ..... Respondent

**DATE OF ORDER PRONOUNCED: 31.07.2025**

1. Whether Reporters of Local newspapers Yes/No  
may be allowed to see the Judgments?

2. Whether the copies of judgment may be Yes/No  
Marked to Law Reporters/Journals.

3. Whether Their Lordship wishes Yes/No  
to see the fair copy of the Judgment?

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**RAVI NATH TILHARI, J**

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**MAHESWARA RAO KUNCHEAM, J**

