

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.275 of 2015

ORDER:

This civil revision petition under Section 115 of the Code of Civil Procedure, 1908 ('the Code' for short) by the petitioner/appellant in the proposed appeal filed before the first appellate Court is directed against the orders dated 23.07.2014 of the learned District Judge, Adilabad passed in IA.No.702 of 2012 filed under Order 41 Rule 3 of the Code requesting to condone the delay of 51 days in preferring the appeal against the decree and judgment dated 02.03.2012 in OS.No.21 of 2010 on the file of the Court of the Senior Civil Judge, Adilabad.

2. I have heard the submissions of the learned counsel for the petitioner and the learned counsel for the respondent. I have perused the material record.

3. The parties in this revision shall hereinafter be referred to as the petitioner and the respondent for convenience and clarity.

4. The facts necessary for consideration, in brief, are as follows: -
'The petitioner is the 2nd defendant in the aforementioned OS.No.21 of 2010. The said suit was filed by the respondent herein against the petitioner and another (1st defendant) for declaration of title and perpetual injunction in respect of a plot bearing No.54 in Survey No.27A admeasuring 200 Square yards situate at Dasnapur village. The said suit was decreed on 02.03.2012 against both the defendants including the petitioner. Aggrieved of the said judgment and decree of the trial Court, the petitioner had preferred a first appeal before the Court of the learned District Judge, Adilabad. However, as there was delay in preferring the said appeal, the petitioner had also filed IA.No.702 of 2012 under Order 41 Rule 3 of the Code requesting to condone the delay of 51 days in preferring the said appeal. The said application was resisted by the respondent. On merits, the learned District Judge had

dismissed the said petition and had refused to condone the delay of 51 days in preferring the appeal.’ Therefore, the petitioner is before this Court.

5. In the affidavit filed in support of the petition for condonation of delay, the petitioner had *inter alia* urged as under: - ‘He came to know through his advocate that the decree and judgment were passed on 02.03.2012 against him. This information was given to him only on 12.03.2002. He had immediately requested his counsel to apply for and obtain the certified copies of the decree and judgment. The same were delivered to the advocate on 26.04.2012. Subsequently, due to continuous ill health, the petitioner could not contact his advocate and ascertain about the receipt of the certified copies of the decree and judgment. Only on 25.06.2012 he had approached his counsel and had collected the record with the certified copies of the decree and judgment. Thus, the delay in filing the appeal was only due to his ill-health and old age. He has fair chances of success in the appeal. If the delay is not condoned, he would suffer injustice and irreparable loss. The delay in preferring the appeal is only due to bona fide reasons and there are no mala fide intentions on the part of the petitioner.’

6. In the counter affidavit while denying the case urged by the petitioner, it is *inter alia* contended by the respondent as follows: - ‘The name of the advocate is not mentioned. It is not stated as to whether the copies were obtained through the advocate who had appeared for the petitioner before the trial court or through any other advocate. He did not mention about the disease he had suffered for more than two months. He did not produce any medical certificate. He had simply stated that due to continuous ill health he could not contact his advocate and ascertain about the receipt of the certified copies of decree and judgment and that only on 25.06.2012 he had approached the advocate and collected his file and also the copies of decree and judgment. The reason stated is not sufficient to condone the delay. The 1st defendant is a party to the suit. The 1st defendant is not impleaded either in the proposed appeal proceeding or in the application filed for condonation of delay. Even during the course of the trial, delay tactics were adopted and

the matter was several times adjourned during the course of the trial. The suit was filed in July, 2005. Later the suit was transferred from the file of the Junior Civil Judge, Adilabad to the Court of the Senior Civil Judge, Adilabad on administrative grounds and was renumbered. The petitioner sold the suit plot in the year 1993 through the GPA holder i.e., the 1st defendant. This respondent paid valuable consideration and is enjoying the property. The contention regarding ill-health of the petitioner is an invented story and it cannot be believed. The delay is not properly explained. The petition may be dismissed.'

7. At the time of hearing, the learned counsel for the petitioner had submitted as under: 'The petitioner had produced the Doctor's certificate along with this revision and the said certificate is filed along with the material papers. The advocate in the Mufsil court had drafted the affidavit in support of the petition for condonation of delay by making a mention about the continuous ill health of the petitioner, but, without giving the details. The pleadings of the Mufsil courts have to be considered liberally and for the fault of an advocate that too in the matter of improper drafting of the affidavit, the petitioner cannot be penalised, as valuable rights in regard to immovable property are involved in the matter. If the delay is not condoned the petitioner would suffer serious and irreparable loss and it would result in miscarriage of justice. Further, as rightly pointed out by the learned counsel for the respondent, the 1st defendant was not impleaded in the proposed appeal suit or in the petition for condonation of delay filed before the District Court. Therefore, the revision may be allowed and the matter may be remitted to the Court below giving an opportunity to the petitioner to rectify the defects by impleading the 1st defendant as a respondent in the petition for condonation of delay and also in the proposed appeal; and the court below may be directed to dispose of afresh the interlocutory application for condonation of delay on merits, however, after giving an opportunity also to the 1st defendant to contest the matter on merits, if he so desires by filing a counter.'

8. The learned counsel for the respondent had submitted that the

1st defendant was not deliberately impleaded either in the proposed first appeal suit or in the petition for condonation of delay and that the affidavit filed in support of the petition for condonation of delay is vague and is devoid of material particulars and that the court below is right in holding that sufficient cause was not shown for the condonation of delay as the details either of the ill health or of the period of ill health were not pleaded and no medical certificate was produced at the appropriate time. He had further contended that if the matter is remitted at this stage, the matter will be further delayed and that the respondent/plaintiff would suffer loss.

9. I have given earnest consideration to the facts and the submissions. As could be seen from the record, the 1st defendant is not added as a party either in the proposed appeal filed before the District Court, which is unregistered, or in the application filed for condonation of delay i.e., IA.No.702 of 2012. Had the Office of the Court below pointed out the said defect at the time of registration of the application, the same would have been remedied. But, it appears that no such office objection was taken and the said interlocutory application was numbered despite the fact that one of the necessary parties was not impleaded. As both the learned counsel for the parties had submitted that the application for condonation of the delay came to be disposed of in the absence of one of the parties to the suit namely the 1st defendant and as the learned counsel for the respondent had strongly urged that the interlocutory application seeking condonation of delay without impleading one of the parties as a respondent is not maintainable and as the revision petitioner/appellant in the proposed appeal cannot solely be blamed for such defect, in the well considered view of this court, an opportunity shall be given to the revision petitioner to rectify the defect by impleading the 1st defendant as a respondent in the petition for condonation of delay and also in the proposed appeal. As a sequel, the Court below can be directed to dispose of afresh the interlocutory application for condonation of delay on merits, after giving an opportunity also to the 1st defendant to contest the matter on merits, if he so desires, by filing a counter.

10. Viewed thus, this Court holds that the matter requires to be remitted to the court below with necessary directions for fresh disposal.

11. In the result, the Civil Revision Petition is allowed and the order impugned is set aside and the IA.No.702 of 2012 is remitted to the Court below for fresh disposal on merits and in accordance with the procedure established by law. The Court below is directed to give an opportunity to the petitioner to file necessary application to implead the 1st defendant as 2nd respondent in the above said Interlocutory Application and also in the unregistered appeal and then dispose of the interlocutory application on merits as per the directions in these orders. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this revision shall stand closed.

JUSTICE M. SEETHARAMA MURTI

20.03.2015

Vjl