

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.6403 of 2012

ORDER:

Heard Sri Raja Reddy Koneti, learned counsel for the petitioners and Sri S.Satyanarayana Moorthy, learned counsel for respondent No.1.

2. This Revision petition is filed under Section 115 of the C.P.C. challenging the order dt. 17.11.2012 in I.A.No.1235 of 2012 in un-registered A.S. of 2012.

3. The petitioners herein are defendant Nos.2 to 5 in the above suit.

4. A suit O.S.No.293 of 2008 was filed by the 1st respondent herein against the petitioners and the 2nd respondent for recovery of a sum of Rs.2,01,846/- on the basis of a promissory note executed by the husband of the 1st petitioner, by name Chimata Venkaiah, on 20.07.2007 for a sum of Rs.1,70,000/-, agreeing to repay the same with interest at 24% per annum. The said Ch. Venkaiah died and subsequent thereto the suit was proceeded against the petitioners as well as the 2nd respondent, who is the mother of the said Ch. Venkaiah. The petitioners engaged a counsel by name Ch.Nageswararao in the suit and contested the suit. The 1st petitioner also deposed in the suit as DW.2. However, on 21.01.2011 the suit was decreed after contest.

5. On 23.04.2012 the petitioners herein filed

I.A.No.1235 of 2012 under Section 5 of the Limitation Act, 1963, to condone the delay of 426 days in filing the appeal against the decree dt.21.01.2011 in O.S.No.293 of 2008.

6. In the affidavit filed in support of the said I.A., the 1st petitioner contended that she was not aware of the passing of the decree since there were disputes with her in-laws relating to the share in the properties of late Ch. Venkaiah; that she could not contact her Advocate since she was residing in another village and also could not receive information from her Advocate; in the March, 2012, she met her Advocate and then came to know about passing of the decree against the properties of her deceased husband; and this occasioned the delay in filing the appeal.

7. Counter-affidavit was filed by 1st respondent to this application, denying the truth of the allegations made in the affidavit filed by the petitioners. The 1st respondent contended that the 1st petitioner is well aware of the judgment in the suit from the date of pronouncement of the judgment and only to create a ground for condonation of delay, copy application was filed late and copy was obtained with delay. It was contended that the 1st petitioner is grossly negligent in prosecuting her case and there were no bonafides on her part in filing the I.A. It was also contended that the 1st petitioner deposed in the suit

as DW.2, that she attended the Court for every adjournment and she is well aware of the decree and judgment therein.

8. By order, dated 17.11.2012, the Court below dismissed I.A.No.1235 of 2012. The Court below held that the plea of the petitioners that on account of property disputes, the 1st petitioner was not aware of the passing of the decree, cannot be accepted because she attended the trial Court on every adjournment, that she was also examined as DW.2 in the suit and so she has knowledge of passing of the decree. It also held that the fact that 1st petitioner is residing in another Village does not disable her from getting information from her counsel since Advocates can be contacted by telephone and she could have known about the result of the case and also the stage of the proceedings therein on telephone. It further held that since the 1st petitioner had attended the trial Court on every adjournment, nothing prevented her to contact her advocate to know the result of the case and it appears that she is totally negligent in prosecuting the proceedings.

9. Questioning the same, this revision is filed.

10. Learned counsel for the petitioners contended that the Court below ought to have allowed the I.A. taking into account the fact that the 1st petitioner is a lady and other petitioners are minors. He contended that if necessary,

1st respondent could be compensated by way of imposing costs on the petitioners. He also placed reliance on the judgment of the Supreme Court in **N. Balakrishnan v. M. Krishnamurthy**^[1].

11. Learned counsel for the 1st respondent, on the other hand, contended that the order passed by the Court below is correct and does not warrant any interference by this Court under Section 115 of the C.P.C. He further contended that the 1st petitioner is residing at Pedakakani Village, which is only 5 Km. away from Guntur, where the suit was being heard, and in any event there is no excuse for the petitioners for not contacting their Advocate either in person or on telephone or by post to ascertain about the result of the suit. He, therefore, contended that the explanation given for condonation of delay is not bona fide and deserves to be rejected.

12. I have noted the contentions of both sides.

13. Admittedly, the petitioners herein were arrayed as defendant Nos.2 to 5 in O.S.No.293 of 2008 filed by the 1st respondent against them and the 2nd respondent as the 1st defendant. The petitioners had engaged Counsel by name Ch.Nageswararao to defend them in the suit. The 1st petitioner had also given evidence as DW.2 in the suit. It is the specific case of the 1st respondent that the 1st petitioner was attending the Court on every date of

adjournment. It is also not in dispute that the petitioners are resident of Pedakakani Village, which is only at a distance of 5 Km. from Guntur, where the suit was pending. In today's era of availability of many means of communication, there was no impediment for the 1st petitioner to contact her counsel in person or through telephone or by post to ascertain the result of the suit. She could have even gone in person to Guntur, which is only short distance away, to speak in person to her counsel. She cannot take advantage of her own fault in not contacting her Advocate to ascertain about the result of the suit and contended that on account of disputes with in-laws relating to the share in the property of her husband, she could not contact her Advocate. Admittedly, the Advocate for the 2nd respondent, who is mother-in-law of the 1st petitioner and advocate for the petitioners are different.

14. In **Balakrishnan** (1 supra), the Supreme Court held that the length of delay is no matter and acceptability of the explanation is the only criteria. It declared that some times delay of the shortest range may be uncondonable due to want of acceptable explanation, whereas in certain other cases, delay of long period can be condoned, if the explanation thereof is satisfactory.

15. Now, in the present case, I am of the opinion that the explanation given by the petitioners for condonation of

delay is not bona fide and that the 1st petitioner has acted negligently in the matter of taking steps to challenge the decree passed in O.S.No.293 of 2008.

16. Therefore, I find no merits in the Revision and accordingly the Revision dismissed. No costs.

17. Miscellaneous Petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

3rd June 2015

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