

THE HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

CIVIL REVISION PETITION No.4414 OF 2015

ORDER:

Though the respondent is served, nobody appeared to oppose the revision petition.

Heard learned counsel for the petitioner.

The petitioner is defendant in O.S.No.35 of 2011 on the file of Senior Civil Judge, Puttur. The said suit for recovery of money based on the mortgage was decreed by passing a preliminary decree on 09.08.2012 and aggrieved thereby the petitioner has preferred an appeal before the III Additional District Judge, Tirupati. But, on account of delay in representing the appeal, I.A.No.7 of 2013 is filed for condonation of delay of 75 days. The said application has since been dismissed by the Court below under the impugned order, dated 28.07.2015. Hence, this revision.

It is evident from the affidavit filed by the petitioner that on the ground of ill-health and inability to move out of bed, he could not contact his counsel to know the result of the suit. Hence, as soon as the petitioner recovered, the present appeal is filed with the application for condonation of delay of 75 days. In the said I.A., however, no counter affidavit was filed by the respondent in spite of several opportunities granted by the Court below. However, when the said I.A., was taken up for consideration, learned III Additional District Judge was of the view that the conduct of the appellant is casual and irresponsible and irrespective of the contest or not by the respondent, the Court being not satisfied with the sufficient cause, the application was dismissed.

After hearing learned counsel for the petitioner, it is evident that the averments of the petitioner that he was bedridden due to ill-health and taking treatment remained uncontroverted by the respondent. Hence, the averments in the affidavit had to be taken as they were never controverted by the respondent. Further,

the decree for recovery of money based on mortgage was passed against the petitioner/defendant. Thus, he would not deliberately allow the limitation to lapse and come up with an application for condonation of delay. The reasons mentioned by the petitioner that he was unwell and bedridden, therefore, appear probable and deserve a liberal approach by the Court, in consideration of the application for condonation of delay. The impugned order shows that the Court below has taken very strict view regarding Section 5

of the Limitation Act. However, the trend of recent decisions of Supreme Court shows that interest of justice is paramount and the exercise of discretion under Section 5 of the Limitation Act ought not to be pedantic.

Keeping all these circumstances in mind, the Civil Revision Petition is allowed and the delay in representation of the appeal shall accordingly stand condoned. The Court below shall number the appeal, if it is otherwise in order, and after issuing notices, hear both sides and dispose of the appeal itself on its own merits in accordance with law. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

VILAS V.AFZULPURKAR, J

04.12.2015

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