

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

C.R.P. No.2186 of 2015

Between:

Madasu Satyanarayana

... Petitioner

And

Perusomula Subbaiah

... Respondents

JUDGMENT PRONOUNCED ON : 14.08.2015

THE HON'BLE SRI JUSTICE : G.CHANDRAIAH

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
marked to Law Reporters/Journals. :
3. Whether their Ladyship/Lordship wish to
see the fair copy of the Judgment? :

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

C.R.P. No.2186 of 2015

ORDER:

This revision petition has been filed aggrieved by the order dated 09.04.2015 passed in I.A. No.1013 of 2014 in O.S. No.467 of 2012 by the Principal Senior Civil Judge, Vijayawada.

The revision petitioner and the respondent herein are the defendant and the plaintiff, respectively, in O.S. No.467 of 2012.

I.A. No.1013 of 2014 was filed under Section 5 of the Limitation Act seeking to condone the delay of 451 days in filing a petition to set aside the ex parte decree passed by the Court below. Assailing the same, the revision petitioner filed the present revision petition.

Brief facts of the case are that the respondent/plaintiff filed O.S. No.467 of 2012 for recovery of certain amount. Even in spite of service of summons, the revision petitioner/defendant did not appear before the Court and therefore, the Court below passed the ex parte decree. While so, the defendant while filing an application seeking to set aside the ex parte decree also filed I.A. No.1013 of 2014 seeking to condone the delay of 451 days. The Court below dismissed the condone delay petition holding that the defendant failed to explain the day to day delay to condone the delay of 451 days and also held that no evidence is adduced in support of the plea taken that he was suffering from ill-health. Aggrieved by the same, the defendant is before this Court.

The learned counsel for the revision petitioner/defendant submitted that during the relevant point of time, there was Samaikyandhra agitation was going on and therefore, the Court below did not function. It is also submitted that the defendant was also suffering from some ill-health. In that process, delay of 451 days was caused. He also submitted that if the delay is not condoned the defendant will be put to irreparable loss. Eventually, he submitted that the delay may be condoned on some costs.

The learned counsel for the respondent/plaintiff did not dispute the factual position of the case and that during some relevant period there was Samaikyandhra agitation was going on and the Court below did not function.

It is also submitted that the defendant failed to adduce any iota of evidence to the effect that he was suffering from ill-health and failed to explain the day to day delay. Eventually, he also submitted that he has no objection to condone the delay on some costs.

Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the material on record.

Since there is no dispute with regard to the case facts to the effect that the suit was initiated for recovery of certain amount and that was decreed ex parte. Later, the defendant filed an application seeking to condone the delay in filing an application seeking to set aside the ex parte decree. It is also not in dispute that during some relevant point of time there was Samaikyandhra agitation was going on and the Court below did not function. The only dispute is that the defendant did not explain day to day delay and failed to adduce any piece of evidence to support his contention that he was suffering from ill-health. Admittedly, burden lies on the defendant to prove that he was suffering from ill-health by adducing some evidence that was not done by the defendant in the present case. Since the learned counsel for the respondent/ plaintiff accede to the request of the learned counsel for the revision petitioner/defendant that the delay may be condoned on some costs, I am of the view that ends of justice would be met to condone the delay by imposing costs.

Having regard to the facts and circumstances of the case and the submissions made by the learned counsel on either side, delay of 451 days is condoned subject to payment of Rs.2,500/- (Rupees two thousand five hundred only) to the plaintiff, within two weeks, from the date of receipt of a copy of this order.

Accordingly, this revision petition is allowed.

As a sequel, miscellaneous petitions, if any, stands closed.
There shall be no order as to costs.

Date: 14.08.2015
LSK

JUSTICE G.CHANDRAIAH