

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.2136 of 2013

ORDER:

Heard Smt. Chintalapudi Lakshmi Kumari, learned counsel for the petitioner and Sri P.Sridhar Reddy , learned counsel for the respondent.

2. This Revision Petition is filed challenging the order dt.08-02-2013 in I.A.No.161 of 2011 in O.S.No.83 of 2007 of the Principal Senior Civil Judge, Nellore.

3. Petitioner herein is the defendant in the suit. The respondent/plaintiff filed the suit for recovery of amount against the petitioner which was decreed on 03-05-2008 *ex parte*.

4. The petitioner on 18-02-2011 filed I.A.No.161 of 2011 under Section 5 of the Limitation Act, 1963 to condone the delay of 980 days in filing the application to set aside the *ex parte* decree and another application to set aside the *ex parte* decree.

5. In the affidavit filed in support of the said application, he stated that when the matter was posted for his evidence on 03-04-2008, he was bed ridden due to chronic jaundice and heart palpation and was unable to move out of the

bed. He stated that he was taking country medicine for his ill health; that there was a decree passed on 03-05-2008 against him and he was informed by his advocate also of the same. He claimed that although he requested the advocate to file an application to set aside the *ex parte* decree, because he could not meet the counsel, the application was not filed. Therefore, he prayed for condonation of delay of 980 days in filing the petition.

6. Counter affidavit was filed by the respondent opposing the condonation of delay. The respondent pointed out that his evidence was closed on 03-04-2008 and the case was posted to 08-04-2008 for the evidence of petitioner; petitioner did not lead evidence; so it was adjourned to 10-04-2008 on payment of costs of Rs.50/-; but the petitioner did not pay the costs and there was no representation on his behalf; therefore his evidence was closed, and the judgment was pronounced on 03-05-2008 on merits. The contention of the petitioner that he was bed ridden due to jaundice and heart palpation was denied and it was contended that the petitioner was running a cinema theater in Trunk Road, Nellore since 2004. It was further pointed out that E.P.No.134 of 2008 in the above suit was filed for execution of the decree, and petitioner entered appearance by his advocate by name T.V.Srinivasa Rao on 04-11-2008 itself. So he was aware of the decree even by that date. He therefore prayed that the I.A. be

dismissed.

7. By order dt.08-02-2012, the Court below dismissed the said I.A. It held that although the decree was passed on 03-05-2008 in E.P.No.134 of 2008, the petitioner had entered appearance through advocate on 04-11-2008. Therefore, the petitioner was aware of the decree even by 04-11-2008, but he filed this application on 18-02-2011 more than two years after coming to know about the decree. It further held that there was no proof of any illness for the period exceeding beyond two years adduced by the petitioner and he also did not go into the witness box in respect of the said plea. It therefore concluded that the application was filed only with a view to delay and drag on the execution proceedings.

8. Challenging the same, this Revision Petition is filed.

9. Learned counsel for the petitioner contended that the Court below erred in dismissing I.A.No.161 of 2011 and that the reasoning given by the Court below is not correct. Learned counsel also placed reliance on the judgment of the Supreme Court in **N.Balakrishnan Vs. M.Krishnamurthy**^[1].

10. Learned counsel for the respondent on the other hand supported the order passed by the Court below.

11. It is not disputed that the petitioner was the defendant in the suit O.S.No.83 of 2007 filed by the respondent. The petitioner admittedly cross examined the respondent witnesses and the evidence of the respondent was closed on 03-04-2008. Matter was posted to 08-04-2008 for the evidence of the petitioner and had been adjourned to 10-04-2008 on payment of costs. On 10-04-2008, the petitioner did not pay costs, her evidence was closed and later judgment was pronounced on 03-05-2008.

12. The application to condone the delay in seeking to set aside the *ex parte* decree was admittedly filed on 18-02-2011. The petitioner has not denied the fact that he had entered appearance through an advocate in E.P.No.134 of 2008 on 04-11-2008 itself. Therefore, the petitioner was aware of the decree by 04-11-2008.

13. Although the petitioner has pleaded that she was bed ridden due to chronic jaundice and heart palpation, neither the petitioner examined herself as a witness nor did she examine any doctor in support of the said plea. No details of the illness or the duration thereof have been mentioned by the petitioner.

14. In **N.Balakrishnan** (1 supra), the Supreme Court held that the length of delay is no matter and acceptability of the explanation is the only criterion. It

observed that sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation, whereas in certain other cases, delay of a very long range can be condoned, if the explanation thereof is satisfactory.

15. Having regard to the said principle, I am of the opinion that in the present case, the petitioner has not shown sufficient cause for condoning the inordinate delay of 980 days in filing the application under Order 9 Rule 13 CPC.

16. Therefore, I do not find any merit in the Civil Revision Petition and the same is accordingly dismissed. No costs.

17. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-09-2015

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[\[1\]](#) (1998) 7 Supreme Court Cases 123