

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION NO.4504 of 2015

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Date: 06-112-15

ORDER:

This civil revision petition is filed challenging the order dated 24.06.2015 passed in I.A.No.425 of 2013 in O.S.No.39 of 2007 by the Senior Civil Judge, Miryalaguda, dismissing the I.A for default.

Petitioner herein is the defendant in the suit. She filed I.A.No.425 of 2013 seeking condonation of delay of 105 days in filing the petition for setting aside the ex-parte decree dated 03.09.2007 passed in the suit stating that in the suit filed by the respondent-plaintiff for recovery of money, the petitioner could not file written statement within the time as the respondent/plaintiff agreed to withdraw the case. The petitioner came to know about passing of ex-parte decree dated 03.09.2007 by the Senior Civil Judge only on receiving notice in the Execution Petition in the month of February 2013 directing her to appear on 12.02.2013. Thereafter as the petitioner fell ill due to jaundice, after recovery she filed the present I.A. seeking condonation of delay in filing the petition. The respondent filed counter disputing the contentions raised by the petitioner particularly the reasons stated for the condonation of delay. The learned Senior Civil Judge dismissed the application vide docket order dated 24.06.2015, which reads as follows.

“Petitioner is not present, since many adjournments. Hence, this petition is dismissed for default.”

Aggrieved by the same, the petitioner filed the present revision petition.

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

The docket order dated 24.06.2015 passed in I.A.No.425 of 2013 reveals the presence of both advocate for the petitioner as well as advocate for the respondent. There is neither any discussion about the reasons stated by the petitioner nor any

objection raised by the respondent for such delay. On the other hand, the learned Senior Civil Judge dismissed the I.A on the ground that the petitioner is not present since many adjournments. The reasons stated by the learned Senior Civil Judge can be accepted as reasons for dismissal of I.A. However, what is required to be considered by the learned Senior Civil Judge while considering the delay condone petition is the reasons set out for condoning the delay and the objections, if any, raised by the respondent for said delay. Sufficiency or otherwise of the reasons are germane for consideration of delay condonation petition but not the presence of the petitioner. In considering the delay petition, the learned Senior Civil Judge totally ignored the basic and settled principles of consideration of petitions of this nature.

In as much as the very order is ex facie is unsustainable, I do not consider it appropriate to issue notice to the respondent.

Accordingly, the order dated 24.06.2015 is set aside and I.A.No.425 of 2013 is restored to file. The learned Senior Civil Judge, Miryalaguda is directed to dispose of the I.A after considering the contentions raised by the petitioner and the objections raised by the respondent and pass a speaking order. The entire exercise shall be completed within a period of eight weeks from today.

Accordingly, the Civil Revision Petition is allowed. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J.

6th September, 2015

Js.

Note: issue C.C. tomorrow.

(B/o) Js.