

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.5142 of 2011

ORDER :

This Revision is filed challenging the order dt.19.09.2011 in I.A.No.1419 of 2010 in A.S.S.R.No.19856 of 2010 on the file of Chief Judge, City Civil Court, Hyderabad.

2. The petitioner herein is the appellant in the above suit.
3. He filed the above suit for dissolution of 2nd respondent-Firm and for rendition of account. The said suit was decreed on 29.12.2008. Application for certified copy of the judgment was made on 19.01.2009, and certified copy was made ready on 30.03.2009. The petitioner herein filed an appeal on 04.04.2010 before the Judge, City Civil Court, Hyderabad along with an application I.A.No.1419 of 2010 under Section 5 of the Limitation Act, 1963 to condone the delay of (336) days in filing the said appeal.
4. In the affidavit filed in support of the said application, three reasons have been given by petitioner for the delay in filing the appeal – firstly, that his mother was seriously ill since January, 2009 and he had to spend much time to attend to her personally; secondly, that in June, 2008 he was entrusted with a project by the Government of Andhra Pradesh in collaboration with NIIT and he also had another business venture in Krishna District, because of which he could not file the appeal in time; and thirdly, that his counsel advised him that he would not be affected in any

way by the decree in the suit.

5. The said application was opposed by 1st respondent, who contended that the averments about the illness of petitioner's mother were not supported by any documentary evidence. It was contended that petitioner could have contacted his counsel and taken steps to file the appeal in time, if he had enough time to attend to his business activities in Krishna District. It was further contended that if the counsel for petitioner had advised him not to file an appeal, it would go contrary to the other two reasons given by him that he did not have time to contact the Advocate.
6. By order dt.19.09.2011, I.A.No.1419 of 2010 was dismissed. The court below held that petitioner is an educated man doing business and he is supposed to understand consequences of the decree suffered by him. It also held that if petitioner was attending to his business activities in Krishna District, he ought to have also spared some time to file an appeal, and his inaction in that regard was deliberate and willful.
7. The counsel for petitioner would contend that the reasons given by petitioner for seeking condonation of delay are bona fide and the court below had erred in not accepting the said reasons. He also placed reliance on judgments of the Supreme Court in **State of West Bengal v. Administrator, Howrah Municipality** and **N. Balakrishnan v. M. Krishnamurthy**.
8. The counsel for 1st respondent, on the other hand, opposed the condonation of delay and contended that the reasons given by court below are sound and do not warrant any interference by

this Court in exercise of its power under Article 227 of the Constitution of India.

9. It is not disputed that petitioner is a business man. He is not an illiterate villager not having access to legal advice. He is admittedly a resident of Hyderabad.
10. As regards the plea of petitioner that his mother was seriously ill since January, 2009 is concerned, no material in support of the said illness has been filed before the Court below. Therefore, the petitioner had failed to establish the said plea.
11. On the petitioner's own pleading he was attending to his business activities in Krishna District and elsewhere. So he ought to have given equal priority for taking steps to file an appeal against the judgment in O.S.No.924 of 1993 also. But he did not do so. It is not his case that even on weekends he was so busy that he had no time to visit Hyderabad, meet a counsel, brief him and then get an appeal filed. He could have also arranged to send the papers/instructions by post to his counsel to file appeal within the time permitted by law.
12. It is unfortunate for a party to blame his Advocate for wrong advice and such a plea, even if true in respect of an illiterate party, cannot be accepted in the case of educated persons like the petitioner who was running businesses and who was expected to understand the consequences of not challenging an adverse decree of a Court.
13. In **N. Balakrishnan** (2 supra), the Supreme Court held that length of delay is not the question, but acceptability of explanation is the criterion for condonation of delay. Tested by

that standard, the petitioner's pleadings do not satisfy this requirement and the explanation furnished by him is not acceptable.

14. In **State of West Bengal** (1 supra), no doubt, the Supreme Court on the facts of that case, held that if wrong advice is given on the part of a State counsel to a State Government it cannot be accepted as evidence of negligence on the part of the State.
15. The said principle has no application to the present case. The State is not the litigant herein and the petitioner, an educated person, is expected to be aware to the consequences of not challenging a decree in time. I, therefore, do not find any merit in the Revision and it is accordingly dismissed. No order as to costs.
16. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08-06-2015

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