

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

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**CIVIL REVISION PETITION Nos.760 & 959 of 2011**

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**COMMON ORDER:**

Heard the learned counsel for petitioner and the learned counsel for respondent.

2. The present Civil Revisions Petitions are filed challenging the common order dated 07.12.2010 in I.A.Nos.420 and 421 of 2010 in O.S.No.1084 of 2007 on the file of the Court of the II Additional Junior Civil Judge, Kurnool (for short, trial Court).

3. The petitioner in both the Civil Revision Petitions is plaintiff in O.S.No.1084 of 2007 on the file of the trial Court. She filed the above suit for recovery of an amount of Rs.85,866/- on the basis of a promissory note. The suit was posted to 01.11.2007 for appearance of the respondent and the respondent appeared on that day through her counsel. A written statement was filed on 19.02.2008 and issues were framed on 22.02.2008. The suit was posted to 07.03.2008 for filing of list of witnesses. It was further posted to 08.04.2008 for trial and was adjourned for four times. When the plaintiff did not turn up, the suit was dismissed for non-prosecution on 31.07.2008. At that stage, the petitioner filed I.A.No.420 of 2010 for condoning the delay of 614 days in filing the application to set aside the dismissal order dated 31.07.2008 and I.A.No.421 of 2010 for restoring the suit.

4. In support of her applications, the petitioner stated that in the month of October, 2007, she suffered from Jaundice and took treatment for 2½ years at Alampur. She also stated that since the medicine did not suit her, she got other health complications and therefore she moved to Kollapur till 25.04.2010. It is

also stated that she came to Kurnool on 26.04.2010, and when she contacted her Advocate, it was informed that her suit was dismissed for default. Accordingly, she sought condonation of delay of 614 days.

5. The medical certificate produced by the petitioner shows that she had undergone treatment for Jaundice and Arthritis during 23.10.2007 to 25.04.2010. The said certificate was issued by the Civil Assistant Surgeon, Government Civil Hospital, Alampur, Mahabubnagar District. It appears that the petitioner is the wife of a Police Constable in Kurnool. In the affidavit filed in support of the petition seeking to condone the delay, the petitioner did not indicate the reasons for not instructing her Advocate from 08.04.2008 to 31.07.2008. The petitioner also stated in the affidavit that she took treatment in Alampur and Kollapur towns which are situated in Mahabubnagar District, whereas she is a resident of Kurnool town. The disease of Jaundice would not confine her to bed at a particular place disabling her from contacting her Advocate at Kurnool. No steps were taken by the petitioner for nearly two years.

6. Keeping those circumstances into consideration, the trial Court, by its common order dated 07.12.2010, passed the following order.

“9. The petitioner also filed a medical certificate dated 25-04-2010 issued by the Assistant Civil Surgeon, Government Civil Hospital, Alampur, Mahaboobnagar district, wherein it is recited that the petitioner was taking treatment from 13-10-2007 to 25-04-2010 for jaundice and other diseases. She stated in her affidavits that as she did not regain from ill health at Alampur, she moved to Kollapur for better treatment till 25-04-2010 and she regained from ill health. The petitioner not filed any medical certificate to show that she took treatment at Kollapur. According to the petitioner, she took treatment from October, 2005 to 25-04-2010 at Alampur and Kollapur respectively. But the medical certificate would goes to show that the petitioner took treatment from 13-10-2007 to 25-04-2010 at Alampur only. Therefore, the contention of the petitioner creates a doubt about the genuineness of the medical certificate.

10. The petitioner is the wife of Police Constable, who is residing at Kurnool. There are so many hospitals in Kurnool town and also a big government general hospital. Therefore, there is no necessity to the petitioner to go to Alampur and Kollapur. Apart from it, the petitioner

not stated from which hospital, she took treatment at Kollapur and Alampur. Apart from it, the petitioner not examined any neighbour to prove her ailment during the said period. In order to condone the delay of 614 days in filing the application under Order 9 Rule 9 C.P.C the petitioner has to explain the delay promptly to the satisfaction of this Court. But in this case, the petitioner has failed to prove the same as discussed above. Viewed from any angle, the petitions are liable to be dismissed.”

7. I am in total agreement with the order passed by the trial Court and the Civil Revision Petitions are, accordingly, dismissed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

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**A.RAMALINGESWARA RAO, J**

Date: 30.11.2015

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