

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**CRP.No.3331 of 2012**

**ORDER :**

This Revision is filed under Section 115 of Civil Procedure Code challenging the order dt.18.04.2012 in I.A.No.498 of 2007 in an unnumbered Appeal Suit of the year 2012 on the file of Principal District Judge, Visakhapatnam.

**2.** The petitioners herein are the legal representatives of Smt. K. Narasamma.

**3.** Smt. K. Narasamma had filed O.S.No.243 of 1996 on the file of III Additional Senior Civil Judge, (F.T.C.) Visakhapatnam for declaration of her title and recovery of possession of the plaint schedule property after evicting the 5<sup>th</sup> respondent herein therefrom.

**4.** After contest, the suit was dismissed on 27.01.2004. On 01.03.2007, Smt. K. Narasama filed an appeal before the Principal District Judge, Visakhapatnam under Section 96 C.P.C. challenging the said decree and along with the said appeal, she filed I.A.No.498 of 2007 under Section 5 of the Limitation Act, 1963, seeking condonation of delay of (1095) days in filing the appeal.

**5.** In the affidavit filed in support of the application, it is sated that she suffered from ill-health from 25.01.2004

and could not contact her Advocate and there was no communication between herself and her Advocate; that she came to know on 24.01.2007 about the result of the appeal; that she was sick till then; in view of the value of the property she is filing the appeal; and that the delay in submitting the appeal was only on account of her ill-health, and constant and continuous medical treatment.

**6.** The said application was opposed by respondent nos.3 and 6. They contended that Smt. K. Narasamma did not properly explain the day-to-day delay in filing the appeal and had not given the date on which she fell sick and the disease she was suffering from was also not mentioned in the application. It is further stated that no document was filed before the Court to condone such a lengthy period of delay.

**7.** After the said application was filed, Smt. K. Narasamma died on 10.03.2010 and the petitioners herein were impleaded as her legal representatives in I.A.No.498 of 2007.

**8.** By order dt.18.04.2007, the Court below dismissed the said I.A. on the ground that the petitioners/appellants had kept quiet for a period of three (03) years after the decree was passed, and did not explain the day-to-day delay except stating that she was suffering from ill-health. The Court below referred to certain medical record filed by petitioners in the said

appeal.

**9.** Challenging the same, the present Revision is filed.

**10.** The counsel for petitioners contended that the delay in filing the appeal was only on account of ill-health of the appellant in the appeal, and the medical evidence on record corroborates the same; that medical records were filed in the Court below, as mentioned in para.5 of the order of the Court below, but they were not properly considered by the said Court; that medical records relied upon by the Court below had also been filed before this Court by petitioners under a Memo dt.15.11.2012.

**11.** Heard Sri M.V. Raja Raam, counsel for petitioners, and Sri S . Chandraiah, counsel for 7<sup>th</sup> respondent. None appears for other respondents.

**12.** It is not disputed that Smt. K. Narasamma herself filed the suit through a counsel and the suit came to be dismissed on 27.01.2004 by the III Additional Senior Civil Judge, (Fast Track Court), Visakhapatnam, after contest. The appeal against the said judgment was filed on 01.03.2007 with a delay of (1096) days. The affidavit filed in support of the application for condonation of delay mentions that Smt. K. Narasamma suffered from ill-health from 25.01.2004, but did not mention the nature of ill-health. Her plea that her Advocate did not inform her

about the result of suit cannot be accepted, since it was her duty to contact the Advocate, if any, in person either through telephone or by post and know about the result of suit. She has two sons and two daughters any of whom could have been entrusted with the duty to contact the Advocate and find out about the result of the suit and take steps to file an appeal.

**13.** The medical record filed before this Court, no doubt, suggests that Smt. K. Narasamma had undergone a hip surgery in April, 2004, but there is nothing on record to show that even thereafter she did something to find about the result of the suit and take steps to file the appeal. It is also not her case that she was bed-ridden and unable to move and was somehow disabled from taking steps to file the appeal.

**14.** Since it is the duty of a party to contact his/her Advocate and know about the progress of a suit filed by him/her, blame cannot be put on the Advocate for not communicating the result of the suit while totally exonerating the party in all respects from his/her own obligation to take steps to protect his/her interests by challenging the judgment of the trial court.

**15.** Therefore, I do not find any merit in the Revision, and it is accordingly dismissed. No order as to costs.

**16.** As a sequel, miscellaneous petitions pending, if

any, in this Revision shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 17.08.2015

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