

HON'BLE SRI JUSTICE SANJAY KUMAR

Civil Revision Petition No.3422 of 2014

Date: 25.2.2015

Between:

Ambati Kumar,
Kothuru Village,
Rayaparthi Mandal,
Warangal District.

...Petitioner

And

Thanikonda Rangarao,
Kothuru Village,
Rayaparthi Mandal,
Warangal District.

... Respondent

HON'BLE SRI JUSTICE SANJAY KUMAR

Civil Revision Petition No. 3422 of 2014

ORDER:

The defendant in O.S. No. 83 of 2009 on the file of the learned Junior Civil Judge, Thorrur, filed an application in I.A. No. 213 of 2011 therein seeking condonation of 316 days delay in filing a petition to set aside the ex-parte decree dated 25.7.2010. By order dated 19.12.2011, the trial Court dismissed the said I.A. Aggrieved thereby, he is before this Court by way of this revision petition filed under Section 115 C.P.C.

Notice having been ordered, Sri G. Eswaraiah, learned counsel, entered appearance for the respondent-plaintiff.

Perusal of the order under revision reflects that the petitioner-defendant merely explained his absence on the day to which the suit had been posted for the filing of his written statement, viz., 25.6.2010, and on which day he was set ex-parte. The ex-parte decree was admittedly passed one month thereafter on 25.7.2010. The delay on his part in filing a petition to set aside this decree was 316 days. The affidavit filed in support of the condone delay petition did not even attempt to explain even a single day's delay. As stated supra, the petitioner-defendant merely explained his absence on the day when he was set ex-parte and there is not even an iota of an explanation as to why there was a delay of 316 days after the passing of the decree on 25.7.2010. This aspect of the matter is rightly relied upon by Sri G. Eswaraiah, learned counsel, to support his argument that the order under revision does not warrant interference.

Sri Namavarapu Rajeshwara Rao, learned counsel for the

petitioner/defendant, however places reliance on the Division Bench Judgment of this Court in **Shaik Kareem vs. Mohd. Khursheed Ali**^[1], wherein it was held that the party should not be made to suffer for any mistake committed by the counsel.

Perusal of the judgment reflects that the next date of hearing was wrongly noted by the counsel in that case, whereby the party was adversely affected. Such is not the case presently and moreover, it is neither the case of the petitioner-defendant before the Court below nor before this Court that there was any negligence on the part of his counsel. This judgment is therefore of no avail to the petitioner-defendant.

For the aforesaid reasons, this Court finds no grounds made out warranting interference with the well-reasoned and cogent order passed by the trial Court.

The Civil Revision Petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

Date: 25th February, 2015

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^[1] 2006(1) ALT 109