

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.4692 of 2012

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ORDER:
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This Civil Revision Petition is filed challenging the order

dt.13-08-2012 in I.A.No.199 of 2011 in O.S.No.790 of 2009 of the Junior Civil Judge, Jangareddigudem refusing to condone the delay of 228 days in filing the petition to set aside the *ex parte* decree passed against petitioner on 05-07-2010 in the above suit.

2. In the affidavit filed in support of the application filed on

21-03-2011 under Section 5 of the Limitation Act, 1963 to condone the said period of delay, the petitioner, who is defendant in the suit, contended that he suffered paralytic stroke on the right side of his body and had to go Srisailam for country medical treatment and he stayed there from 10-04-2010 to 10-07-2010. He stated that later he came back to Seetampeta, where he is residing, expecting a letter from his advocate, who was looking after the suit affairs; he was again bedridden for 3 months; and thereafter his advocate wrote to him about the events

which transpired resulting in passing of *ex parte* decree against him. He contended that he had a strong defence in the suit and therefore the delay of 228 days in filing application to set aside the *ex parte* decree be condoned.

3. Counter affidavit was filed by respondent denying the averments made by petitioner in I.A.No.199 of 2011 and pointing out that no documentary evidence is filed to prove that the petitioner stayed at Srisailam or the fact that he was bedridden.

4. By order dt.13-08-2012, the Court below dismissed the said application. It held that even assuming that the reason given by the petitioner is true, from October, 2010 to 21-03-2011 nothing is mentioned as to why the petitioner could not approach the Court to set aside the *ex parte* decree. It therefore held that the petitioner was negligent and was not entitled for condonation of delay of 228 days in filing the petition to set aside the *ex parte* decree.

5. Challenging the same, this Revision is filed.

6. The learned counsel for petitioner contended that the Court below ought to have allowed I.A.No.199 of 2011 and condoned the delay of 228 days in filing the petition to set aside the *ex parte* decree

dt.05-07-2010 in the suit. He further contended that the petitioner is a poor villager in a remote place in West Godavari District and only on account of his illness, he could not contest the suit and opportunity be given to petitioner to contest the suit on merits.

7. It is not disputed that petitioner received summons in the suit filed against him by respondent and also engaged a counsel to represent him. On 16-04-2010 the Court below recorded that written statement was not filed and the petitioner's counsel represented that petitioner may be called, the Court then called the petitioner absent and then set him *ex parte*. Therefore, *ex parte* decree was passed on 05-07-2010 almost 3 months later.

8. It is the case of petitioner that he suffered paralytic stroke on the right side of his body, that he had to go to Srisailam for country medical treatment where he stayed from 10-04-2010 to 10-07-2010, and even thereafter for 3 months he was bedridden. No doctor is examined to prove that petitioner suffered paralysis and no medical certificate is filed to prove that the petitioner had suffered paralytic stroke. Neither the petitioner nor any of his family members have gone into the witness box in I.A.No.199 of 2011 to at least *prima facie* prove that petitioner suffered illness. The petitioner is resident of West Godavari District

and even according to petitioner, he traveled upto Srisailam in Kurnool District allegedly for treatment for paralysis. It may not have been difficult for petitioner to contact his advocate at Jangareddigudem, which is also in West Godvari District either on telephone or by post or by sending one of his family members to brief the advocate, if he was really sick. Also, no explanation is forthcoming from petitioner for his silence and inaction from October, 2010 to 21-03-2011 when the application I.A.No.199 of 2011 is filed by petitioner. It is therefore clear that the petitioner has been negligent in taking steps to defend the suit. Therefore, I am of the opinion that the Court below was right in rejecting I.A.No.199 of 2011.

9. I do not therefore find any merit in the Revision and it is accordingly dismissed. No costs.

10. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 06-07-2015

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