

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.866 of 2015

ORDER:

Plaintiffs in O.S.No.62 of 2004 on the file of the Court of the Senior Civil Judge, Huzurabad, are the petitioners in the present revision filed under Section 115 of the Code of Civil Procedure, challenging the order dated 14.07.2014 passed by the said Court in I.A.No.306 of 2012.

Heard Sri K.Venu Madhav, learned counsel for the petitioners, and the learned Government Pleader for Arbitration, for the respondents, apart from perusing the material available on record.

The petitioners herein instituted O.S.No.62 of 2004 on the file of the Court of Senior Civil Judge, Huzurabad, Karimnagar District, for declaration of title and for perpetual injunction against the respondents herein in respect of the plaint schedule property admeasuring Ac.4.30 guntas situated in S.No.629 of Jammikunta village and Mandal, Karimnagar District. The said suit was dismissed for default on 23.10.2006. Then an application was filed under Order 9 Rule 9 of Civil Procedure Code (for short, CPC) seeking to set aside the order dismissing the suit for default and to restore the suit. The petitioners also filed an application under Section 5 of the Limitation Act seeking condonation of delay in filing the said application. The said application was returned by the Court below with certain objections. Seeking condonation of delay of 103 days in representing the said application, the present I.A.No.306 of 2012 was filed by the petitioners herein under Section 148 of the CPC.

The respondents herein resisted the said application by way of filing counter. The learned Senior Civil Judge by an order dated 14.07.2014 dismissed the said I.A.No.306 of 2012.

Calling in question the validity and the legal sustainability of the said order passed

by the Court below, the present revision has been filed by the plaintiffs.

It is contended by the learned counsel for the petitioners that the order passed by the learned Senior Civil Judge is erroneous, contrary to law and is erroneous and opposed to the very spirit and object of the provisions of the Section 148 of the CPC. It is further contended that the learned Senior Civil Judge did not properly consider the averments in the affidavit filed in support of the application filed under Section 148 of the CPC and, had the same been considered from proper perspective the order impugned in the present revision would not emanated. It is also the submission of the learned counsel that while considering the applications under Section 148 of the CPC, the Courts are required to be liberal. It is nextly contended that since substantial rights of the parties are involved in the matter the Court below ought to have allowed the application. In support of his submissions and contentions, learned counsel for the petitioners takes the support of the judgment of the Hon'ble Apex Court reported in the case of **N.Bala Krishnan v M.Krishnamurthy**.

On the contrary, it is vehemently contended by the learned Government Pleader for Arbitration that the order passed by the Court below is in conformity with the provisions of Section 148 of the CPC and there is no illegality, nor any material infirmity in the order impugned as such, the Court below is perfectly justified in dismissing the application. It is also the contention of the learned Government Pleader that the affidavit filed in support of the application is bald and completely devoid of any valid reasons as such, the order passed by the Court below is not amenable for any revision by this Court under Section 115 of the C.P.C.

In the above background, now the issues that fall for consideration before this Court are:

- i. Whether the order passed by the Court below which is impugned in the present revision, is in accordance with law? And
- ii. Whether the impugned order warrants any interference of this Court under Section 115 of the Civil Procedure Code?

The present suit is one for declaration of title and for perpetual injunction in respect of the plaint schedule property admeasuring Ac.4.30 guntas situated in

S.No.629 of Jammikunta village and Mandal, Karimnagar District.

In the affidavit filed in support of the present application I.A.No.306 of 2012, the learned counsel for the petitioners herein stated that due to rush of work he could not re-submit the petition within time.

On the other hand, the respondents herein opposed the said application by contending that there is no proper explanation for the delay and the affidavit does not contain any proper explanation. The learned Senior Civil Judge, by way of the impugned order, dismissed the application while holding that no sufficient cause was shown for submitting the application with delay.

It is a settled proposition of law that while dealing with the condone delay applications the Courts are required to be liberal when the conduct of the party is reasonable. In the instant case, the application filed under Section 5 of the Limitation Act was returned by the Court below with certain objections. The said returned bundle, according to the counsel for the petitioners in the Court below, could not be resubmitted within time due to rush of work.

At this juncture, it may be appropriate to refer to the decision of Hon'ble Apex Court, in the case of **N.Bala Krishnan (supra)** wherein the Apex Court held as under:

“13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.

14. In this case explanation for the delay set up by the appellant was found satisfactory to the trial court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising revisional jurisdiction. Nonetheless, the respondent must be compensated particularly because the appellant has secured a sum of Rs. Fifty thousand from the delinquent advocate through the Consumer Disputes Redressal Forum. We, therefore, allow these appeals and set aside the

impugned order by restoring the order passed by the trial court but on a condition that appellant shall pay a sum of Rupee Ten thousand to the respondent (or deposit it in this court) within one month from this date.”

In the instant case, though the reason assigned by the petitioners stated in the affidavit filed in support of the application is not sufficient, this Court is of the opinion that for the fault, if any, on the part of the learned Advocate, the party should not be put to loss. Yet another aspect is that substantial rights of the parties are involved in the matter. In view of these reasons, this Court is inclined to allow the present application subject to the petitioners paying costs.

For the aforesaid reasons and having regard to the nature of controversy, the revision petition is allowed, setting aside the order dated 14.07.2014 passed by the Senior Civil Judge, Huzurabad in I.A.No.306 of 2012 in O.S.No.62 of 2004.

Consequently, the said I.A.No.306 of 2012 stands allowed, subject to the petitioners paying a sum of Rs.5,000/- to the learned Assistant Government Pleader, Sri M.Ajay Kumar, within a period of two weeks from today.

A.V.SESHA SAI, J

Date: 8.4.2015

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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