

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.4344 OF 2014

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DATED: 24.02.2015

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Between:

Budama Veeraiah and another

.. Petitioners

And

Bathini Ramakoti

.. Respondent

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.4344 of 2014

ORDER:

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This civil revision petition arises out of the order dated 24.09.2014 passed by the learned Principal District Judge, Warangal, dismissing I.A.No.1165 of 2014 filed under Section 5 of the Limitation Act, 1963, seeking condonation of the delay of 243 days in presenting the appeal against the judgment and decree dated 26.09.2013 passed by the learned Principal Junior Civil Judge, Mahabubabad, in O.S.No.47 of 2003.

The 2nd petitioner is stated to have expired leaving no legal heirs and, therefore, only the 1st petitioner is prosecuting the matter. The same was the situation before the Court below.

It is a matter of record that the suit, O.S.No.47 of 2003, was dismissed by the trial Court on 26.09.2013 and the 1st petitioner applied for a certified copy of the judgment only on 26.10.2013 and for a certified copy of the decree only on 22.02.2014. No explanation is forthcoming as to why there was a delay in applying for the certified copies. Further, he pleaded that he had fallen ill in September 2013 and was hospitalised for

two months initially and was bedridden for six months thereafter. This was the reason cited for his alleged ignorance of passing of the judgment and decree. However, no proof was produced before the Court below as to the claimed ill health of the 1st petitioner or his hospitalisation and being bedridden. Significantly, the 1st petitioner was only aged about 60 years and as rightly pointed out by the Court below, he would not have been prevented by any alleged ailment from contacting his counsel. The Court below also took note of the fact that the 1st petitioner had executed a registered sale deed relating to the suit property in favour of his daughter and daughter-in-law on 15.09.2010 i.e. during the pendency of the suit proceedings. This fact, however, remained undisclosed and was brought out only by the respondent-defendant before the Court below. Taking note of the apparent lack of bona fides on the part of the 1st petitioner and his failure to at least make a token attempt at explaining the long delay of 243 days in presenting the appeal, the Court below dismissed the I.A.

Sri Venkat Reddy Donthi Reddy, learned counsel for the 1st petitioner, would contend that the Court should adopt a liberal approach while dealing with petitions filed for condonation of delay. He places reliance on **Marry Susheela v. Shalee Kasthuribai**^[1], wherein the Madras High Court, relying on the judgment of the Supreme Court in **Collector, Land Acquisition, Anantnag and another v. Mst.Katul and others**^[2], adumbrated that a liberal approach should be adopted on principle and that the doctrine of everyday's delay being explained must be applied in a rational and pragmatic manner. There can be no dispute with this proposition, but in the present case it is evident that the 1st petitioner did not even make an effort to explain the delay by producing proof of his alleged ill health and hospitalisation. To compound this failure, his lack of bona fides also weighed against him. This Court therefore finds no reason to interfere with the well-reasoned and cogent

order passed by the Court below.

The civil revision petition is devoid of merit and is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

JUSTICE SANJAY KUMAR

24th February, 2015
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[\[1\]](#) CDJ 2014 MHC 1323

[\[2\]](#) (1987) 2 SCC 107