

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

C.R.P. No.6632 of 2012

ORDER :

This Civil Revision Petition is filed under Section 151 of Civil Procedure Code, 1908 challenging the order dt.24.09.2012 in I.A.No.300 of 2011 in O.S.No.244 of 1981 of the Senior Civil Judge, Mangalagiri.

2. It is not disputed that the above suit, which had been filed by the petitioner herein for partition and profits, was initially decreed on 16.01.1991 by the Additional Subordinate Judge, Guntur and when the matter was carried in appeal to this Court, on 30.04.2007, the said appeal was allowed and the matter was remanded back to the trial Court to permit the parties to adduce fresh evidence and decide the matter again.

3. After such remand, it appears that notice in the suit was not given to the petitioner and other parties, but was given to the counsel who appeared for the petitioner and other parties in the trial Court. The Counsel apparently did not inform the petitioner although he had received notice on 08.10.2007 from the trial Court resulting in the dismissal of the suit for default on 02.11.2007.

4. On coming to know of this fact, the petitioner filed I.A.No.300 of 2010 under Section 5 of the Limitation Act, 1963 to condone the delay of 1188 days in filing the petition to set aside the order dt.02.11.2007 dismissing the suit for non-prosecution and also I.A.No.301 of 2010 under Order IX Rule 9 CPC to restore the suit.

5. In the said affidavit, the petitioner pointed out the above facts and contended that the petitioner had not been given any intimation either by the High Court or the trial Court about the remand of the matter to the trial Court by the High Court and that he came to know that his counsel had committed certain lapses.

6. The said applications were opposed by the respondents 3, 4, 6 and 7. They contended that the petitioner had knowledge of the remand of the suit by the High Court to the trial Court and even though the trial Court granted sufficient time to the petitioner, the petitioner did not take proper steps, resulting in the dismissal of the suit. It is further contended that petitioner had not shown any reasonable cause for condonation of delay except throwing blame on his advocate. It was also stated that even after filing the present I.As., the trial Court had directed the petitioner to take steps to pay batta for service of notices to respondents 2 and 5, but petitioner did not take any steps in that regard and the Court below dismissed I.A.No.300 of 2011 against them.

7. By common order dt.24.09.2012, the Court below dismissed the I.A.Nos.300 of 2011 and 301 of 2011 stating that the petitioner did not mention any reasonable cause, much less sufficient cause, for condoning the abnormal delay of nearly three years and that the petitioner was not diligent in prosecuting the case. It held that the petitioner was negligent and therefore, the delay of 1188 days cannot be condoned.

8. Challenging the same, this Revision is been filed.

9. Counsel for the petitioner contended that after the matter was remanded by the High Court to the trial Court, it was incumbent upon the trial Court to issue notices to the petitioner, particularly when the suit was filed in the year 1981 and was decreed in the year 1991 and the remand took place on 30.04.2007, sixteen years later. It is contended that in the intervening period between 1991 and 2007, it is impossible to expect the counsel and the party to keep track of each other and their contact details, and since admittedly notice after remand of the suit was given only to the counsel in the trial Court and

there is nothing to show that said counsel had contacted the petitioner, the petitioner cannot be made to suffer the dismissal of the suit on this ground.

10. Counsel for the respondents sought to contend that the I.A.No.300 of 2011 had been dismissed against respondents 2 and 5 even in the trial Court on the ground that process fee had not been paid and no steps had been taken by the petitioner to get the I.A. restored as regards respondents 2 and 5. He also supported the reasoning of the Court below and contended that the inordinate delay of 1188 days cannot be condoned, since the petitioner had been negligent in the matter.

11. I have noted the contentions of both sides.

12. From the facts narrated above, it is clear that the judgment of the trial Court rendered on 16.01.1991 in the suit O.S.No.241 of 1981 by the then Additional Subordinate Judge, Guntur was set aside by this Court on 30.04.2007 and matter was remanded back to the trial Court. So, there was an intervening period of more than 16 years between the pronouncement of judgment in the trial Court and remand by this Court. It is unnatural to expect the counsel in the trial Court, who appeared for the petitioner in 1991, to still have the details of the petitioner 16 years later and contact him in the matter. Admittedly, no notice in the suit after its remand had been given to the petitioner and notice had only been served on the counsel for the petitioner, who appeared for him originally before 1991 in the suit and it was served on him on 08.10.2007. Since he did not represent the matter and since he had not informed the petitioner about it, the suit came to be dismissed for default on 02.11.2007.

13. In my considered opinion, the Court below erred in issuing notice only to the counsel for the petitioner after the remand in the suit,

instead of issuing notice to the petitioner directly. Had it done so, this would not have happened. No doubt the period of delay appears to be inordinate but where the explanation for condonation of delay is acceptable, the length of delay is not relevant. This principle has been set out in **N. Balakrishnan v. M. Krishnamurthy**^[1], as under:

“It is *axiomatic* that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory”

14. I am unable to agree with the view expressed by the trial Court that the petitioner did not mention any reasonable cause for condoning the delay of nearly three years and that petitioner was not diligent in prosecuting the case. The trial Court is also not correct in expressing that there was sheer negligence on the part of the petitioner. The judgment cited by the trial Court in **Lanka Venkateswarlu (D) by LRs vs. State of A.P. and others**^[2], has not been correctly understood by the trial Court and the trial Court misdirected itself by taking into account the period of delay instead of the reasons given by the petitioner for seeking condonation of the delay.

15. For the aforesaid reasons, this Civil Revision Petition is allowed and the order dt.24.09.2012 in I.A.No.300 of 2011 in O.S.No.244 of 1981 of the Senior Civil Judge, Mangalagiri as against the respondents 3, 4, 6 and 7 is set aside and the delay of 1188 days in filing the application under Order IX Rule 9 CPC is condoned. There shall be no order as to costs.

16. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

07th July, 2014
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[\[1\]](#) AIR 1998 SCC 3222

[\[2\]](#) 2001 (1) LS 175 (SC)