

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.917 OF 2016

ORDER :

This Civil Revision Petition is filed challenging the order dt.15.12.2015 in I.A.No.1154 of 2015 in AS.SR.No.3826 of 2015 on the file of the IX Additional District Judge, West Godavari at Kovvur.

2. Petitioners are the defendants in suit O.S.No.79 of 2014 on the file of the Principal Junior Civil Judge, Kovvur instituted by the respondent seeking relief of perpetual injunction in respect of the plaint schedule property.

3. The said suit was decreed on 16.04.2015.

4. On 13.10.2015 petitioners preferred ASSR.No.3826 of 2015 before the IX Additional District Judge, West Godavari at Kovvur.

5. They also filed I.A.No.1154 of 2015 under Section 5 of the Limitation Act, 1963 to condone the delay of 88 days in filing the said appeal.

6. In the affidavit filed in support of the said application, petitioners stated that the trial Court had pronounced the judgment in the suit on 16.04.2015, their advocate in the trial Court informed that he had addressed a post card intimating the result of the suit to the petitioners, but they did not receive it from their advocate. They stated that they approached their

advocate on 28.09.2015; then the advocate informed them that the suit was decreed on 16.04.2015; that they got filed copy application on 30.05.2015 and received copy of the judgment on 01.08.2015; and they therefore filed the appeal with the delay of 88 days, which is liable to be condoned for the aforesaid reasons.

7. Counter affidavit was filed by the respondent opposing this application. He contended that the reasons assigned by the petitioners are not correct and that the delay in filing the appeal is abnormal and is not liable to be condoned. He contended that the petitioners had full knowledge about the disposal of the suit before the trial Court and when the petitioners attempted to obstruct the enjoyment of the respondent, the respondent even got filed a criminal case against the petitioners.

8. By order dt.15.12.2015 the Court below dismissed the said application. It held that the petitioners received the certified copy of the judgment from the trial Court on 01.08.2015 and yet they filed the appeal on 13.10.2015 with a delay of two months 12 days, and they have not explained the cause for this delay. It stated that the petitioners filed copy application after expiry of the appeal time, which shows that they are not vigilant about their duty to enquire their counsel about the receipt of certified copies by contacting him. It also stated that the petitioners did not file any affidavit of their

counsel in support of their plea for condonation of delay.

9. Challenging the same, this Revision is filed.

10. Counsel for the petitioners contended that the approach of the Court below in refusing to condone the short delay of 88 days in filing the appeal is contrary to law; that the petitioners cannot compel their advocate to apply for certified copies within time or inform them about the result of the suit as soon as the judgment is pronounced in the suit or to file the appeal immediately after the certified copies are obtained by the advocate, in view of the sensitive relationship between the advocate and the parties, although it is his professional duty to do so; and the Court below should have taken into account these factors and condoned the delay in filing the appeal.

11. Notice in this Revision was ordered to the respondent and although notice has been served on the respondent in March, 2016, none appears for the respondent.

12. I have considered the submissions of the counsel for petitioners.

13. It is common knowledge that advocates, who appear for clients, some times are not diligent enough in applying for certified copies of the judgment or order, to which their clients are parties. The parties, having engaged the advocate, would normally rely on their advocate to act in a professional

manner efficiently, not only to inform them about the result of the case in which the advocate is engaged by them, but also to apply for certified copies within time and to take steps for filing appeal within the time permitted by law.

14. Unfortunately, this has not happened in the present case. But the petitioners cannot be held responsible for the lapses, if any, on the part of their advocate. The petitioners are from disadvantage community and working as coolies. They cannot be expected to do anything without the advise and assistance of their advocate. Therefore, I am of the opinion that the approach of the Court below in refusing to condone the delay of 88 days in preferring the appeal, is unreasonable and perverse.

15. Accordingly, this Civil Revision Petition is allowed; the order dt.15.12.2015 in I.A.No.1154 of 2015 in ASSR.No.3826 of 2015 passed by the IX Additional District Judge, West Godavari at Kovvur is set aside; and the said application is allowed. The said Court shall number the appeal and issue notice to the respondent in the appeal and proceed to decide the said appeal. There shall be no order as to costs.

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

M.S. RAMACHANDRA RAO, J

17th June, 2016
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