

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION NO.2468 OF 2014

ORDER:

Challenging the order, dated 03-07-2014 in I.A.No.303 of 2012 in O.S.No.53 of 2009 passed by the learned Senior Civil Judge, Nagarkurnool, the present revision is filed..

2. Petitioner herein is the defendant, whereas the respondents herein are the plaintiffs in O.S.No.53 of 2009.

3. Originally the above suit was filed by the husband of the 2nd respondent herein, who was shown as 1st respondent herein for recovery of an amount of Rs.9,90,000/- from the petitioner on the basis of a promissory note. When the said suit was pending, the original plaintiff (1st respondent herein) died on 13-04-2011. The same was reported to the Court on 09-09-2011. Earlier, the respondents filed I.A.Nos.339 and 340 of 2011 under Order XXII Rule 3 and Section 5 of Limitation Act, 1963. But the said applications were dismissed on 25-11-2011 as not pressed. Thereafter, the present interlocutory application was filed seeking to condone the delay of 127 days in filing the set aside the abatement petition and the said application was allowed on payment of costs of Rs.1,000/- vide impugned order. Hence, this revision.

4. The order of the trial Court reads as follows:

"It is not in dispute that originally the husband of second petitioner herein by name Manohar Singh filed OS No.53 of 2009 on the file of this Court seeking decree for money of Rs.9,90,000/- against the defendant herein on the foot of promissory note. Pending suit, on 13-04-2011 original plaintiff died. The same was reported to this Court in the suit on 09-09-2011. As contended by counsel for respondent herein, the petitioners herein filed IA No.339 of 2011 and 340 of 2011 under Order 22 Rule 3 and U/Sec.5 of Indian Limitation Act, and said petitioners were dismissed on 25-11-2011 as not pressed. The said petitions were filed into the Court on 11-11-2011 again this petition is filed into the Court on 13-07-2012 i.e., with the gap of 9 months. The period of delay i.e., 127 days mentioned by the petitioners is not correct. The learned counsel for respondent has also pointed out the same. Whatever the period of delay is, the ground mentioned by the petitioners is that they were under depression due to death of head of the family. This Court intends to give opportunity to the petitioners to contest the matter on merits in spite of preventing them at threshold on technical grounds."

5. The trial Court itself noticed that the delay of 127 days was not correct. But, in order to give an opportunity to the legal representatives of the deceased 1st respondent herein to pursue the suit filed by him, the application was allowed on payment of costs of Rs.1,000/-, which is a discretionary order. Respondents 2 to 6 herein who want to come on record, as legal representatives of the deceased 1st respondent herein shall not be debarred from pursuing their case on technical grounds. In the circumstances, I see no grounds to interfere with the order impugned.

6. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any pending in this petition shall stand closed.

A.RAMALINGESWARA RAO, J

DATED: 18-01-2016

Hsd