

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

C.R.P. No.489 of 2016

Between:

K.Jai Prakash Reddy

...

Petitioner

And

Y.Pandu Goud

...

Respondent

JUDGMENT PRONOUNCED ON 28.03.2016

-

-

-

-

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
marked to Law Reporters/Journals. :
3. Whether their Ladyship/Lordship wish to
see the fair copy of the Judgment? :

THE HONOURABLE SRI JUSTICE G.CHANDRAIAH

-

C.R.P. No.489 of 2016

ORDER:

This revision petition has been filed aggrieved by the order dated 07.01.2016 passed in I.A. No.723 of 2014 in O.S. No.809 of 2011 by the III Additional Chief Judge, City Civil Court at Hyderabad.

The revision petitioner and the respondent herein are the plaintiff and the defendant, respectively, in O.S. No.809 of 2011 that was filed by the plaintiff for recovery of certain amount based on the cheques issued by the defendant. The Court below vide its order dated 04.06.2012 decreed the suit in favour of the plaintiff.

While so, the defendant filed I.A. No.723 of 2014 in O.S. No.809 of 2011 under Section 148 and Section 151 CPC for enlargement of time for resubmitting I.A. SR. No.7564 of 2012 dated 30.06.2012 by condoning delay of 620 days, on the grounds that the suit filed by the plaintiff for recovery of money was disposed of ex parte and the defendant could not attend the case as his counsel filed vakalat and stated that he would inform the same as and when his presence is required. Thereafter, he was informed that the ex parte order was passed in suit and the petition to set aside such order was allowed on payment of costs of Rs.200/- and the defendant has paid such amount also and the fact of such payment of costs was not taken to the notice of Court, whereby the suit was decreed on 04.06.2012.

On coming to know the same, the defendant has made an application seeking to set aside the ex parte decree, which was returned with some objections on 23.07.2012 and the counsel for the defendant having taken such returned petition misplaced the same and assured the defendant that he would take care of the matter. The defendant was also sick and suffered from jaundice and was advised bed rest. Therefore, he also could not contract his counsel. He came to know about all such proceedings when the E.P. is filed and the

defendant's counsel reported then that the returned petition was yet to be traced out. Thereby the delay is caused.

The plaintiff, while denying the averments of the defendant, filed counter affidavit, *inter alia*, stating that the defendant has come up with self-contrary contentions and such contentions are totally false.

The Court below after considering the contentions on either side, allowed the petition on costs of Rs.1,000/- payable to the plaintiff, within a period of two weeks, from the date of the order, under proper acknowledgment or to deposit in the Court, in default the petition stands dismissed. Assailing the same, the plaintiff filed the present revision petition.

The learned counsel for the revision petitioner/plaintiff, *inter alia*, submits that no reasons have been assigned for condoning such inordinate delay. Therefore, the Court below has committed an error in passing the impugned order and therefore, the same is liable to be set aside.

As could be seen, I.A. No.723 of 2014, seeking enlargement of time for re-submitting I.A. SR. No.7564 of 2012, by condoning delay of 620 days, was filed on the ground that immediately on coming to know about passing of ex parte order, an application, seeking to set aside the ex parte decree, was filed that was returned with some objections on 23.07.2012 and the counsel appearing on his behalf, having taken such returned petition, misplaced the same and assured that he will take care of the matter but could not. When the E.P. was filed by the plaintiff and the defendant came to know about the same, he approached his counsel, who told him that the returned petition was yet to be traced out. Thereby, the delay was caused.

The Court below, while allowing the said application, categorically observed that party should not be blamed for counsel's delay in representation of the returned papers to the Court and irrespective of default clause court can extend time in fit cases. Further, it is also observed that the returned petition, for setting aside the ex parte decree, was filed originally in time and the same was returned with certain objections but it was not submitted within the given time of seven days and the reason was shown is misplacement of such petition and the defendant has filed his affidavit to that effect. However, the Court below also observed that such inordinate delay was not substantiated by any supporting material like any affidavit of the earlier counsel during the relevant period. As such, there are no grounds for consideration. But, however, in order to adjudicate the matter on merits in the suit, the petition could be considered on some terms. Accordingly, the petition was allowed on costs of Rs.1,000/-.

In that view of the matter, I do not see any reason to interfere with the impugned order as the same does not suffer from any legal infirmity and therefore, the same is liable to be dismissed. Accordingly, this revision petition is dismissed.

As a sequel, miscellaneous petitions, if any, stands closed.
There shall be no order as to costs.

JUSTICE G.CHANDRAIAH

Date: 28.03.2016
LSK