

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.3371 of 2010

ORDER :

The revision petitioner is the unsuccessful petitioner before the Principal District Judge, Guntur, in I.A.No.1215 of 2010 in filing the un-numbered appeal with application to condone delay of 81 days and the reason assigned in the affidavit petition was that the suit in O.S.No.398 of 2008 filed for recovery of arrears of rent by the plaintiff/respondent and the same was on contest decreed with a finding that the entitlement of the amount of recovery of rent is after finality of the proceeding before the Rent Controller, Guntur, in R.C.C.No.19 of 2008 and the Rent Controller ultimately dismissed that R.C.C. by order dated 19.02.2010 and he was under the bonafide impression and wrong advice of filing an appeal against the suit arises after the result of the Rent Control matter and thereby there is a delay of 81 days occurred in filing of the appeal. The same is opposed by the plaintiff/respondent of no just grounds and there is no explanation, much less for day-to-day delay for the period and it is not the length or short period of time, but for existence of sufficient cause.

2. By accepting said counter contest of the respondent, the lower appellate Court dismissed the application. It is impugning the same, the revision is maintained.

3. It is the submission of the counsel for revision petitioner that the lower appellate Court went wrong in properly not appreciating the factual matrix and the explanation given by the revision petitioner for

filing of the appeal of the delay occurred out of bonafide impression and wrong advice, if any, and thereby sought for allowing the revision.

4. Whereas, the learned counsel for the plaintiff/respondent submits that the order of the lower appellate Court holds good and for this Court while sitting in revision, there is nothing to interfere within the limited scope and hence to dismiss the revision.

5. Heard and perused the material on record.

6. Once there is an explanation, the impugned order no way observes as to the explanation is why not a sufficient cause. The lower Court should have been considered and once the explanation is given for all the days is same, the question of giving separate explanation for day-to-day does not arise, that too, at best by imposing costs to condone the delay by adopting the pragmatic approach required as per the settled law. Thus, the impugned order of lower Court is liable to be set aside by allowing the revision and by allowing the application before the lower Court.

7. Having regard to the above, the revision petition is allowed subject to costs of Rs.5,000/- (Rupees five thousand only) payable to the revision respondent before the lower appellate Court and after receipt of amount and passes an acknowledgment, the same shall produce before the lower appellate Court else to deposit before the lower appellate Court within one week from the date of receipt of copy of this order and then allow the delay condonation petition pursuant to said compliance and to

proceed according to law by cause numbering the appeal, if otherwise in order.

8. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

26th September 2016.

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