

HON'BLE SRI JUSTICE G.SHYAM PRASAD

CIVIL REVISION PETITION No.5262 of 2016

ORDER:

This Civil Revision Petition is arising out of the order passed in I.A.No.1554 of 2016 in un-numbered appeal suit of 2016, dated 30.09.2016 on the file of Principal District Judge, Vizianagaram (for short, appellate Court). The petitioner is the 1st defendant in the suit O.S.No.114 of 2004 filed for declaration of title and possession on the file of Senior Civil Judge, Vizianagaram (for short, trial Court). The said suit was decreed. Being aggrieved by the judgment in the suit, the petitioner/1st defendant preferred civil miscellaneous appeal with a delay of 69 days in that CMA; in that CMA, he filed a petition under Order 41, Rule 3-A read with Section 151 of CPC to condone the delay in preferring the appeal. The appellate Court dismissed the petition on the ground that there is no sufficient cause to condone the delay in preferring the appeal. The cause shown by the petitioner that he was suffering from jaundice was not believed as it was not supported by any medical certificate. Being aggrieved by the impugned order, this revision has been preferred.

2. Heard arguments of Sri A.Jagannadha Rao, learned counsel for the revision petitioner, and the arguments of counsel for the respondents are deemed heard.

3. The point for consideration in this matter is, whether there is sufficient cause to condone the delay of 69 days in preferring the appeal?

4. Learned counsel for the petitioner submits that the delay is of 69 days in preferring the Civil Miscellaneous Appeal before the appellate Court. The reasons stated by the petitioner are that he suffered with jaundice for a period of four months can be believed in the light of the affidavit submitted by him. Usually, for a treatment of jaundice, it is difficult to secure medical certificate, as they may take treatment from private doctors, who may not some times give certificates.

5. The dismissal of the petition by the appellate Court does not appear to be justified in the light of the explanation given by the petitioner that he suffered jaundice which prevented him from approaching the Court. Therefore, the order of the appellate Court is not sustainable. However, since inconvenience is caused to the respondents due to the delay, the delay is condoned on payment of costs of Rs.1,000/- payable to the respondents.

6. In the result, the civil revision petition is allowed, condoning the delay of 69 days on payment of costs of Rs.1,000/- (rupees one thousand only) payable to the respondents, within one week from the date of receipt of a copy of this order. In consequence, miscellaneous petitions, if any, pending in this revision shall stand closed.

G.SHYAM PRASAD

02-12-2016

nvl