

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL REVISION PETITION No.3922 OF 2002

Dated 13-4-2016

Between:

Sivarathiri Edaiah.

..Petitioner.

And:

Tejavath Man Singh and others.

..Respondents.

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL REVISION PETITION No.3922 OF 2002

ORDER:

This revision is preferred questioning order dated 16-11-2001 in I.A.No.1678 of 2001 in O.P.No.668 of 1998 whereunder Motor Accidents Claims Tribunal-cum-Additional District Judge, Khammam, dismissed application filed by the claimant-petitioner to condone delay of 101 days in setting aside the default order in filing petition for restoration of O.P. which was dismissed on 9-2-2001.

R.3 in spite of service of notice, neither appeared in person nor through any advocate.

Advocate for petitioner submitted that R.1 and R.2 are not necessary parties.

O.P. is filed under M.V.Act claiming compensation of Rs.1,00,000/- for the injury sustained in a road accident.

Advocate for revision petitioner submitted that court below ought to have given opportunity to claimant by liberally condoning the delay of 101 days as this being a beneficial legislation.

I have perused the material papers.

As per the affidavit filed by the revision petitioner,

O.P. was posted to 9-2-2001 for producing his evidence and as there was no representation on that day, O.P. was dismissed for default. According to affidavit filed in support of the petition for restoration of O.P. on the date of hearing, the counsel could not represent the matter as he was out of station and also for the reason that the file was misplaced and there was no negligence on his part in not prosecuting the case.

According to his affidavit, on 14-6-2001, when he visited his advocate's office, he came to know about dismissal of O.P. for that reason, he could not file petition immediately after dismissal, thus the delay.

Learned Presiding Officer dismissed the application with the following cryptic order.

"No counter filed. The affidavit filed is perused. The delay of 101 days are not satisfactorily explained. There is no reason to allow this petition, in the absence of tenable explanation of delay. Hence, I am satisfied to dismiss the petition."

When party has assigned some reason for not filing application within time, it is the duty of the court to examine whether such reason is correct or not and then decide. In the affidavit, reasons for 101 days delay is explained that was not at all considered.

Here even though other side has not filed any counter, court below dismissed the application holding that the delay of 101 days is not explained with satisfactory reason.

On a consideration of material, I am of the view that observations of the trial court is not at all correct and when the claimant assigned some reason for not filing application in time and stated on oath that he came to know about dismissal only a day before filing the application, the court below ought to have given an opportunity to the petitioner and ought to have decided main case instead of disposing it of on technical grounds.

For these reasons, the impugned order dated 16-11-2001 is set aside and the application in I.A.No.1678 of 2001 in O.P.No.668 of 1998 is allowed and court below is directed to restore O.P. to its original number and dispose of it as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order and it is made clear that the claimant shall produce his witnesses and co-operate with the court in complying the time stipulated by the court.

This Civil Miscellaneous Petition is ordered accordingly.

As a sequel to the disposal of this revision, the
Miscellaneous Petitions, if any, pending, shall stand
dismissed.

JUSTICE S.RAVI
KUMAR

Dated 13-4-2016.
Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs