

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION NO.632 OF 2016

ORDER:

_____ This revision is preferred against the order passed by the Court below in I.A.No.1483 of 2015 in unnumbered O.S. of 2015 in G.R.No.7105 dated 10.12.2015. In the order under revision, the Court below observed that the plaint was filed on 07.10.2014 but was returned with objections on 21.11.2014; the plaintiff did not represent the suit; he had pleaded that the bundle was misplaced in the office of the counsel; except that no reasons were assigned; no prudent man would keep quiet for such a long period i.e., 366 days without tracing the record, even if it was mixed or misplaced in the office of the Counsel; no petition was filed seeking time on the ground that the returned bundle was mixed or misplaced in the office of the counsel; and there were no merits in the petition. The petition was dismissed.

_____ An affidavit is now filed before this Court by the petitioner, a practising advocate in Visakhapatnam, that:-

_____ ".....I beg to submit after compliance of the objections raised by the Hon'ble trial Court, the matter was re-submitted on 01.12.2015 along with I.A.No.1483 of 2015. The said IA is for condonation of delay of 366 days in re-presenting the above suit. It is a fact that I have not filed a detailed affidavit mentioning the reasons for condonation of delay in re-presenting the suit. The learned trial Judge was pleased to dismiss the said petition on 10.12.2015. As against that I preferred the above said CRP before this Hon'ble High Court. The said revision was listed before this Hon'ble Court on 12.02.2016 for admission. While arguing the matter it was noticed by the present counsel that I have not properly explained the day to day delay in re-presenting suit, immediately, on my behalf, my counsel made a request to this Hon'ble Court to grant permission to file a detailed explanation for the delay in re-presenting the case. The Hon'ble Court was pleased to adjourn the case on 19.02.2015.

_____ I further submit I am a practicing advocate at Visakhapatnam. After the return of the bundle for compliance of the officer objections the bundle was given to my Clerk by my council. And without intimating the same my clerk had mixed the same into our office with other bundles and unable to locate the same. For a period of 6 months my health was not good. After that when I enquired about the case only then my advocate informed the above said fact. By the time I located the bundle there was a delay of 366 days in representing the suit. Due to the above mentioned reasons I am unable to re-present the suit within stipulated time of seven days and there is a delay of 366 days for re-

present the suit. I submit that there is no negligence on my part in representing the case except the reasons mentioned above.

I beg to submit to substantiate my submissions, herewith I am enclosing copy of affidavit of the advocate appearing on my behalf before the trial Court taking into consideration of the affidavit filed by me as well as the affidavit filed by my counsel, this Hon'ble Court may be pleased to grant one more opportunity to put forth my case before the Hon'ble lower Court. The contents of the affidavit filed by my advocate may be treated as part and parcel of this affidavit. The delay is neither intentional nor wanton. But due to the reasons mentioned above, unless the delay is condoned I will be put to great hardship."

Along with the affidavit, a copy of the affidavit of Sri Yeturi Venkata Subba Reddy, counsel for the petitioner, is also filed.

While the petitioner ought to have been more vigilant in prosecuting his case it does appear, *prima facie*, that his failure to do so is a *bona fide* mistake on his part. The delay in representing the delay of 366 days could also have been condoned by the Court below imposing costs. I consider it appropriate, therefore, to set aside the order under revision and permit the petitioner herein to place a copy of the affidavit now filed before this Court, along with the copy of the affidavit of his counsel, before the Court below which shall consider the same, and pass orders afresh in accordance with law.

The Civil Revision Petition is, accordingly, disposed of. There shall be no orders as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

26th February 2016

RRB