

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION NO.243 OF 2016

ORDER:

_____ This revision, under Section 115 of the Code of Civil Procedure, 1908 (CPC), is preferred against the order passed by the Chief Judge, City Civil Court, Hyderabad in I.A.No.584 of 2014 in ASSR.No.108 of 2014 dated 02.12.2015.

_____ The petitioner herein is the respondent in the appeal, and the defendant in the suit. The respondent-appellant, an 85 year old lady, filed an application under Section 5 of the Limitation Act, 1963 requesting the Court below to condone the delay of 88 days, from 02.10.2013 to 30.12.2013, in preferring the appeal. The reasons stated by her, for seeking condonation of the delay, was that she was 85 years old and was not keeping well and it is only after she had recovered on 29.12.2013 that the appeal was filed on 30.12.2013. A counter affidavit was filed by the petitioner herein contending that the respondent-appellant's claim of being ill was false.

_____ In the order under revision, the Court below held that a certified copy of the judgment and decree under appeal was made ready on 28.08.2013 and was delivered on 03.09.2013; and, as the appeal was filed on 02.01.2014, the delay was of 88 days. After noting the cause shown by the petitioner, the Court below observed that the delay was only due to sickness and old age of the applicant which was neither wilful nor negligent and, by condoning the said delay, no prejudice would be caused to the revision petitioner. The delay of 88 days was condoned.

_____ Sri Shyam S.Agrawal, learned counsel for the petitioner, would contend that the suit was filed not by the 85 years old lady but her General Power Attorney (GPA) holder who was aged just 40 years; nothing prevented him from preferring an appeal within time; and no evidence had been placed before the Court below by the respondent herein to show that she was so sick as to result in her inability to prefer

the appeal within time.

While the appeal was no doubt filed by the GPA holder, the fact remains that the appeal was filed on behalf of the appellant who is admittedly aged 85 years. I see no reason to now dwell on whether the sickness of an 85 year old was such as to result in her inability to prefer an appeal within time, as the very fact that she is 85 years is evidence of her frailty. I see no infirmity in the order passed by the Court below in condoning delay of 88 days as it is not inordinate. The Court below has rightly exercised its discretion to condone the delay in preferring the appeal of 88 days. This Court, while exercise it revisionary jurisdiction, would not ordinarily interfere with the discretion exercised by the Court below to condone the delay, more so when it is satisfied that the delay is not inordinate. I see no reason, therefore, to interfere with the order under revision.

The Civil Revision Petition fails and is, accordingly, dismissed. There shall be no orders as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

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(RAMESH RANGANATHAN, J)

3rd June 2016

RRB