

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.2760 of 2015

ORDER:

This Civil Revision Petition, by the unsuccessful petitioner/plaintiff, under Section 115 of the Code of Civil Procedure, 1908, is directed against the order dated 05.12.2014 of the learned Senior Civil Judge, Proddatur passed in I.A.no.1015 of 2009 in O.S.no.217 of 2007 filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 15 days in filing the application for restoration of suit, which was dismissed for default on 15.06.2009.

2. I have heard the submissions of the learned counsel for the revision petitioners/plaintiffs ('the plaintiffs', for brevity). Though the sole respondent is served with notice, none appears. I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

The plaintiffs brought the suit for perpetual injunction against the sole defendant. The defendant filed written statement resisting the suit. When the suit is at the stage of trial, the suit was dismissed for default/non-prosecution, i.e., for non appearance of the plaintiffs before the Court below. Then the plaintiffs filed the application for restoration of suit which was dismissed for default. Since there was a delay of 15 days in filing the said application filed for restoration of the suit, the plaintiffs had filed the application requesting the Court below to condone the said delay. The sole defendant resisted the said petition by filing counter. On merits, the Court below, by the impugned order, dismissed the application for condonation of delay. Hence, the plaintiffs are before this Court.

4. The case of the plaintiffs, in support of their request for condonation of delay, is that they are students as on the date of the filing of the suit and that on the completion of their studies, they went to Chennai and Bangalore in search of jobs and, therefore, they could not contact their counsel and appear before the Court and hence, their absence before Court below on 15.06.2009 is neither intentional nor for wanton reasons and that they have got fair chances of success in the suit and that if the delay is not condoned and the application for restoration is not taken up and the suit is not restored, they would suffer serious and irreparable loss.

5. On the other hand, the case of the defendant, as per the counter filed before the

Court below, is that the averments of the plaintiffs that they are not in town and they were at Bangalore and Chennai are all false allegations and that the father of the plaintiffs is behind the litigation and hence, the petition is liable to be dismissed.

6. I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

7. Though the suit was dismissed for default/non-prosecution on 15.06.2009, according to the submissions, the plaintiffs having come to know of the dismissal of the suit on 22.07.2009 had filed the present application for condonation of delay on 25.07.2009 giving an explanation for their absence before the Court below on 15.06.2009. The expression 'sufficient cause' is a cause for which the defendant could not be blamed. [Vide the decision of the Supreme Court in **Parimal v.**

Veena^[1]]. In the facts and circumstances of the case, this Court is satisfied the explanation offered is a sufficient cause for condonation of delay, which is not abnormal. Moreover the suit is for perpetual injunction and therefore, valuable rights of the plaintiffs in respect of an immovable property are involved in the suit. Therefore, in well considered view of this Court, it is just and appropriate to give an opportunity to the plaintiffs to have their case decided on merits; such a course would sub-serve the ends of justice.

8. Be it noted that the Court below dismissed the application on the grounds that no proof is filed to show that the plaintiffs are away at Bangalore and Chennai prior to 16.06.2009; and that since the suit is a suit for simple perpetual injunction, instead of seeking restoration of the suit, the plaintiffs can as well file a fresh suit in case of any unlawful interference from the defendant; and that as the comprehensive suit filed by the defendant was dismissed as withdrawn, no purpose would be served in allowing the applications filed by the plaintiffs for condonation of delay and restoration of the suit. In the well considered view of this Court, instead of driving the plaintiffs to file a fresh suit, it is apt to permit them to prosecute the suit already instituted; such a course would not only meet the ends of justice but would also help the plaintiffs in saving their time and money. Viewed thus, this Court finds that there is merit in the Civil Revision Petition and that the impugned order brooks interference.

9. Accordingly, the Civil Revision Petition is allowed and the order impugned is set aside. Consequently, I.A.no.1015 of 2009 in O.S.No.217 of 2007 stands allowed and the delay of 15 days in filing the application for restoration of the suit is hereby condoned.

The Court below is directed to take up the application filed for restoration of the suit and dispose of the said application as expeditiously as possible, in strict accordance with the procedure established by law.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

16th March, 2016.
Rds

M. Seetharama Murti, J

[\[1\]](#) AIR 2011 SUPREME COURT 1150