

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 4926 OF 2016

ORDER:

This revision petition is filed questioning the order dated 18.07.2016 passed in I.A.No.119 of 2016 in O.S.No.14 of 2012 on the file of the court of Junior Civil Judge, Venkatagiri, dismissing IA seeking to condone the delay of 332 days in filing the petition seeking to set aside the *ex parte* decree.

2. It is the case of the petitioner, as per the affidavit filed in support of the delay condonation petition, that he is a Government employee working at Markapur, Prakasam District, in the electrical sub-station as Assistant Divisional Engineer and he had engaged the services of one P.Narendra Babu, as his counsel, and his counsel was not informed about the developments in the suit. As there was no communication from the counsel, petitioner was under the *bona fide* belief that the matter being attended to and he would be summoned as and when required. Due to communication gap, he could not attend for giving evidence on 07.04.2015, on which date he was called absent and an *ex parte* decree also came to be passed on the same date. In that process, the delay of 332 days has occurred and the reasons being genuine, the delay may be condoned and the decree may be set aside.

3. Perused the record. Copy of the judgment and decree have been filed before this court. A perusal of the judgment discloses that after

closing of the plaintiff's evidence on 13.06.2014, several adjournments were granted and costs were also imposed. In spite of the same, petitioner/defendant did not turn up for giving evidence. Finally on 12.03.2015, matter was adjourned by imposing costs and there being no representation on 12.03.2015, the defendant's evidence was closed and thereafter on 07.04.2015, final judgment was made. It can be noticed that the plaintiff was cross examined by the respondents/defendant's counsel. It is also an undisputed and admitted fact that there was evidence on behalf of the plaintiff and it is the defendant who failed to adduce any evidence. The judgment is passed for analyzing the available evidence on record and it is a reasoned judgment.

4. In those circumstances, maintainability of the delay condonation petition treating the judgment and decree as an *ex parte* decree itself is doubtful. The impugned order of the court below dismissing the petition as not maintainable holding that the judgment made on 07.04.2015 is a judgment on merits, does not call for any interference by this court.

The Civil Revision Petition is accordingly disposed of. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

JUSTICE CHALLA KODANDA RAM

November 7, 2016

LMV

