

HON'BLE SRI JUSTICE R.KANTHA RAO
C.R.P.No.1693 OF 2015

ORDER

Heard learned counsel appearing for the revision petitioner.

This Civil Revision Petition is directed against the order dated 6.3.2015 passed in I.A.No.1957 of 2011 in ASSR No.4859 of 2011 by the III Additional District Judge, East Godavari at Kakinada.

Though served with notice, none appeared for the respondents.

The petitioner filed the suit for specific performance of agreement to sell before the Court below and the respondents filed counter claim seeking eviction of the petitioner. A common judgment was rendered on 27.03.2005 directing eviction of the petitioner and dismissing the suit for specific performance. Against the dismissal of suit for specific performance, A.S.No.916 of 2003 was filed by the petitioner and the same is pending before this Court.

Learned counsel appearing for the petitioner submits that due to inadvertence and wrong advise given by his counsel in the Court below, the

petitioner could not prefer a separate appeal against the eviction order passed in the counter claim; thereafter, with an application to condone the delay, the petitioner filed appeal in ASSR No.4859 of 2011 before the III Additional District Judge, East Godavari at Kakinada, which was dismissed on the ground that there is inordinate delay in filing the appeal. Against the said order, the present revision is filed.

In support of his contention, learned counsel appearing for the petitioner relied on the judgment of the Apex Court in *S.Prakash (Dead) and others v. Jambu Kumar Mutha and others*^[1] wherein the Supreme Court took the view that when appeal filed by any party against the same judgment is already pending, the Court has to adopt pragmatic approach in adjudicating the application for condonation of delay in filing appeal by another party.

Even though in the instant case appeals have to be filed by the petitioner, he could not file the same under a mistaken notion. In order to arrive at an appropriate decision on the issues involved in the case, it would be appropriate to condone the delay in filing the appeal and permit the petitioner to file the appeal against the eviction.

Consequently, the delay in filing the appeal against the order of eviction in the counter claim is condoned. The order passed by the III Additional District Judge, East Godavari at Kakinada, is set aside and the III Additional District Judge is directed to register the appeal.

Accordingly, the Civil Revision Petition is allowed.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

JUSTICE R.KANTHA RAO

23^d March, 2016
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[\[1\]](#) (2014) 16 SCC 370