

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.4155 of 2016

ORDER:

This civil revision petition is filed Article 227 of the Constitution of India challenging the order dated 15.6.2016 passed in I.A.No.27 of 2015 in O.S. No.11 of 2006 on the file of the Court of Junior Civil Judge, Sathupally.

2. Heard the learned counsel for the petitioner and learned counsel for the respondents.

3. A perusal of the record reveals that the petitioner herein filed O.S. No.11 of 2006 against the respondents-defendants for recovery of an amount of Rs.86,000/- basing on the promissory note dated 02.2.2003. The suit was dismissed for default on 03.7.2013, after examination of P.W.1. As there was delay of 878 days in filing the restoration petition, the petitioner filed I.A. No.27 of 2015 under Section 5 of the Limitation Act, to condone the delay. The trial court dismissed I.A. No.27 of 2015. Hence, the civil revision petition.

4. I have carefully perused the affidavit filed by the petitioner in support of I.A. No.27 of 2015. The petitioner made certain allegation against the counsel, who appeared on his behalf before the trial court. It is not uncommon for some of the litigant public to make allegations against the counsel, if some adverse order is passed against them. After perusing the affidavit, I am of the considered view that in order to overcome the situation, it appears, the petitioner made allegations against the counsel, who appeared on his behalf before the trial court. The learned counsel for the

respondents, in all fairness, submitted that if the parties are allowed to make such allegations, it is very difficult for the advocates to appear before the courts on their behalf.

5. During the pendency of this revision, the petitioner filed an affidavit requesting this court to permit him to withdraw the allegations made against the trial court advocate. By perusing the contents of the affidavit, the petitioner is permitted to expunge the comments made against the counsel, who appeared before the trial court on his behalf.

6. A perusal of the record reveals that the trial court dismissed the suit for non-appearance of the petitioner on one day. For one reason or the other, the petitioner has not filed restoration petition within the period of limitation. If the petition is dismissed, it may not be possible for the petitioner to ventilate his grievance. The suit is for recovery of money. If the petition is allowed unconditionally, and if for any reason the suit is decreed, the respondents have to pay interest for the period viz., from the date of dismissal of the suit till the date of its restoration, without any fault on their behalf. For the fault of the petitioner, the respondents cannot be penalized. In the light of the facts and circumstances of the case, I am inclined to allow the petition with certain conditions.

7. In the result, the civil revision petition is allowed, setting aside the order dated 15.6.2016 in I.A. No.27 of 2015 in O.S. No.11 of 2006. Consequently, I.A. No.27 of 2015 is allowed. The trial court is directed to dispose of the restoration petition without being influenced by any of the observations made herein above. Ultimately, if the suit is decreed, the petitioner is not entitled for

the interest on the suit sum from the date of dismissal of the suit till its restoration by the trial court, subject to result of the restoration petition. There shall be no costs. Miscellaneous petitions if any pending in the revision petition shall stand closed.

T.SUNIL CHOWDARY, J

November 29, 2016.
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