

HON'BLE SRI JUSTICE R.KANTHA RAO

Civil Revision Petition No.2538 of 2010

Order:

Heard Sri V.S.R. Anjaneyulu, learned counsel appearing for the petitioner/plaintiff. No representation for the respondent/defendant.

2. The plaintiff in O.S.No.1089 of 1990 on the file of the II Additional Chief Metropolitan Magistrate, Vijayawada, Krishna district is the petitioner in the revision petition. He filed the suit for specific performance of the agreement to sell. The suit filed by him was dismissed for non-prosecution on 11-3-1999. Thereafter, the petitioner filed an application under Section 5 of the Limitation Act to condone the delay of 456 days in filing the application under Order IX,

Rule 9 C.P.C., to set aside the dismissal order.

It is stated by him in the Affidavit filed in support of the petition that the Advocate's Clerk misled him by giving incorrect dates and therefore, he was not aware of the order passed dismissing the suit for default.

The II Additional Chief Metropolitan Magistrate, Vijayawada, convinced with the cause shown for the delay, took the view that the inordinate delay is on account of the lack of communication from the Advocate, the petitioner cannot be made to suffer and accordingly condoned the delay awarding payment of costs of

Rs.800/- to the respondent and Rs.200/- to the Mandal Legal Services Authority. The costs were paid. Subsequently, the application for setting aside the dismissal order came up for hearing before the learned Magistrate. The learned Magistrate taking the view that the mere fact that the petition filed under Section 5 of the Limitation Act is allowed is no ground to set aside the dismissal order, dismissed the application filed by the petitioner under Order IX, Rule 9 C.P.C. Feeling aggrieved, the petitioner filed C.M.A.No.27 of 2008 which came to be heard by the V Additional District Judge, Vijayawada. The learned V Additional District Judge confirmed the order passed by the learned Magistrate taking the same view. Against the order passed in the C.M.A., the present revision is filed by the petitioner.

3. Having gone through the order passed by the trial Court as well as the appellate Court, this Court is of the view that both the Courts below took a hyper technical view in not allowing the petition to set aside the dismissal order. After condoning the inordinate delay on being satisfied with the cause shown by the petitioner, both the Courts below ought to have taken the view that for the very same reasons the petition to set aside the dismissal order also can be allowed. The findings recorded by both the Courts below, in the considered opinion of this Court, are totally erroneous. Therefore, the order passed by the

II Additional Chief Metropolitan Magistrate, Vijayawada in I.A.No.991 of 2005 in O.S.No.1089 of 1990, which was confirmed through judgment dated 02-3-2010 in C.M.A.No.27 of 2008 passed by the V Additional District Judge, Vijayawada, is set aside and I.A.No.991 of 2005 in O.S.No.1089 of 1990 on the file of the Court of

II Additional Chief Metropolitan Magistrate, Vijayawada is allowed. Consequently, the suit is ordered to be restored to file. The civil revision petition is allowed accordingly. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

R.KANTHA RAO, J.

17th March, 2016.
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