

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.1256 OF 2011

ORDER:

Heard Mr.V.V.L.N.Sarma for petitioners and Mr.K.S.Murthy for respondent.

The revision is directed against the order dated 16.09.2010 in I.A. No.485 of 2009 in O.S No.1169 of 2002 in the Court of I Additional Junior Civil Judge, Kakinada.

The plaintiffs are the revision petitioners. On 12.08.2008, the suit was dismissed for default. The instant application is filed to condone the delay of 32 days in filing the petition to set aside the dismissal order.

The case of petitioners is that after a lapse of three months they went to the office of their counsel and on going to the office, the petitioners have come to know that the suit was called for petitioners' evidence on 12.08.2008 and on account of failure of petitioner to proceed further with the matter, the suit was dismissed for default. The delay in filing the petition for setting aside the default order is that the deponent was suffering from Bronchitis and was under Doctor's treatment. The period of treatment is from 01.07.2008 to 20.09.2008. Hence the application is filed to condone the delay of 32 days in filing petition to set aside the default order.

The Court below framed the following point for consideration:

Whether the petitioners are entitled for condoning the delay of 32 days in filing petition for setting aside the dismissal order?

The trial Court has examined the reasons stated by the petitioners on their own merit and probability of the circumstances.

After examining the evidence placed by the petitioners in proof of the averments in accompanying affidavit, the finding recorded by the Court is that there are contradictions in the evidence produced by the deponent. The reason that one of the parties is suffering from Bronchitis is no ground for not filing the affidavit evidence on 12.08.2008. If the illness stated by the deponent is accepted, the Court can consider condoning the delay. Therefore, the finding recorded is that the Court did not believe the illness stated by the petitioners on the ground that the delay is not firstly stated correctly and secondly not sufficiently explained. The application is dismissed. Hence the revision.

Mr. Sarma appearing for petitioners contends that the trial Court has taken a very pedantic view of the matter. There are substantive rights for which a prayer for declaration is made. Even assuming that a few contradictions in the evidence produced by the petitioners are apparent on the face of the record, still keeping in view the age of 1st petitioner and the nature of relief prayed in the suit, the delay ought to have been condoned imposing either costs or exemplary costs.

On the other hand, learned counsel appearing for respondent submits that firstly the affidavit filed by the petitioners is found to be incorrect and secondly the reasons given by the trial Court do not call for any interference by this Court.

Now the point for consideration is whether the petitioners have made out a ground for interfering with the order impugned in the revision?

Since the circumstances leading up to and inclusive of the order under revision are sufficiently stated to avoid repetition, this Court is not reiterating these circumstances again. The absence of 1st petitioner on 12.08.2008 is not disputed and the default order was compelled by petitioners. The affidavit alleges that the 1st petitioner was unaware of adjournment on 12.08.2008 and the step in the suit. But after three months, the 1st petitioner visited the office of her counsel and has come to know the happenings. The 1st petitioner further states that she was suffering from illness, therefore, steps required to be taken within time are not taken. This Court is of the view that the long and short of the cause shown by the petitioners is illness and ignorance. The trial Court has given sufficient reasons for disbelieving both the circumstances stated by the petitioners. This Court has difficulty in accepting the alternative contention of Mr.Sarma that by imposing the terms, the delay ought to be condoned. It is noted that the suit was filed in 2002 and dismissed on 12.08.2008 hence I am not persuaded by this submission, for the terms can be imposed if the reasons stated in the affidavit are accepted at least as probable. Revision fails and is dismissed. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

S.V.BHATT,J

Date:28.09.2016

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