

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1238 of 2016

ORDER :

The present Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, 1908 challenging the order dated 27.11.2015 in I.A. No.653 of 2013 in O.S. No.26 of 2009 on the file of the Additional Senior Civil Judge, Madanapalle, wherein the petition filed to condone delay of 99 days in filing review petition in the suit was dismissed.

2. Heard the learned counsel for the petitioner and the learned counsel for respondent No.1.

3. The petitioner herein is Defendant No.1, and respondent No.1 herein is the plaintiff, in Original Suit No.26 of 2009 on the file of the Additional Senior Civil Judge, Madanapalle. Respondent No.1/ plaintiff filed a suit for recovery of money due in respect of a chit transaction, against the petitioner and other respondents herein. The trial Court decreed the suit with costs. Thereafter, the petitioner filed a review petition in the said suit with a delay of 99 days and made an application to condone the delay, which was dismissed by the trial Court holding that day to day delay is not explained by the petitioner in filing the review petition.

4. As seen from the affidavit filed by the petitioner in

support of the application, the reason for the delay is that he was staying in Bangalore in connection with his business and as he has lost his mobile phone, could not contact his advocate and hence, not aware of the passing the judgment and decree. It is his case that the trial court failed to take into consideration the amounts already paid by him, which amounts to miscarriage of justice if the petition is not ordered.

5. The delay sought to be condoned is 99 days. The petitioner must show sufficient cause for condoning the delay. Sufficient cause means a cause which is beyond the control of the party invoking the aid of Section 5 of the Limitation Act, 1963. Each day's delay need not be explained. It is his case that he was staying in Bangalore in connection with business works and as he lost his mobile phone, not aware of the passing of the judgment and decree. The reason for seeking the review is that the petitioner had already paid certain amounts but the same were not taken into consideration by the trial Court and he was directed to pay the amounts already paid by him. Having regard to the circumstances of the case and to do substantial justice, the delay can be condoned in preferring the review petition.

6. The Civil Revision Petition is accordingly allowed condoning the delay of 99 days in preferring the review and consequently I.A. No.653 of 2013 in O.S. No.26 of

2009 on the file of the Additional Senior Civil Judge,
Madanapalle stands allowed. No costs. Pending
miscellaneous petitions in this revision shall stand closed.

C.PRAVEEN KUMAR, J

03.06.2016

DRK

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C.R.P.No.1238 of 2016

03.06.2016