

**HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**CIVIL REVISION PETITION No.4584 OF 2016**

**ORDER:**

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, is filed by the petitioners aggrieved by the order dated 24.08.2016 passed in I.A.No.1213 of 2014 in an un-numbered Appeal Suit by the III Additional District Judge, Tirupati.

The facts in issue are that the first respondent herein is the Plaintiff in O.S.No.1783 of 2012 filed for grant of injunction, which was allowed by the I Additional Junior Civil Judge, Tirupati, vide judgment dated 19.06.2014. Questioning the same, petitioners herein filed an appeal along with I.A.No.1213 of 2014 seeking condonation of delay in filing the appeal and the same came to be dismissed on 24.08.2016 on the ground that the delay was not explained properly. Challenging the same, present CRP is filed.

It is to be noted that the Court below dismissed the application filed by the petitioners herein for condonation of delay on the ground that no sufficient cause was shown by the petitioners to condone the delay of 62 days in preferring the appeal suit. As seen from the averments made in the affidavit filed in support of I.A.No.1213 of 2014, the petitioners could not get the counsel so as to instruct him to prefer an appeal against the judgment passed in O.S.No.1783 of 2012.

In ***Vedabai @ Vijayanatabai Baburao v Shantaram Baburao Patil and others***<sup>1</sup> the Apex Court held as follows:

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<sup>1</sup> 2001 (3) SCR 1053

“In exercising discretion under Section 5 of the Limitation Act the Courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression ‘sufficient cause’ the principle of advancing substantial justice is of prime importance.”

In view of the ratio laid down by the Apex Court referred to above and keeping in view the fact that the delay in filing the appeal is only 62 days, this Court is of the view that the learned Judge ought to have condoned the delay *in stead* of dealing with the same in a technical manner.

Therefore, the order dated 24.08.2016 passed in I.A.No.1213 of 2014 in an un-numbered appeal suit by the III Additional District Judge, Tirupati, is hereby set aside and the delay of 62 days caused in filling the appeal suit is hereby condoned subject to condition of petitioners paying costs of Rs.500/- before the Court below within a period of two weeks from the date of receipt of a copy of this order.

Accordingly, the Civil Revision Petition is allowed. Miscellaneous petitions pending in this revision, if any, shall stand closed. No order as to costs.

**C. PRAVEEN KUMAR, J**

Date: 09.12.2016  
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