

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2708 OF 2014

ORDER:

This civil revision petition is filed under Section 115 of C.P.C challenging the order in I.A.No.176 of 2014 in A.S.No.34 of 2011 dated 23.04.21014 passed by the Special Judge, Scs & STs Court-cum-X Additional District & Sessions Judge, East Godavari at Rajahmundry, dismissing the petition filed to condone delay of 192 days in filing the petition to set-aside the dismissal order dated 23.07.2013.

The petitioner filed an appeal against the order and decree dated 24.04.2009 passed in E.A.No.175 of 2007 in E.P.No.43 of 2006 in O.S.No.237 of 2004 on the file of Senior Civil Judge, Ramachandrapuram and the appeal was adjourned to 23.07.2013 for arguments. Since the petitioner was suffering from viral fever, he could not attend the Court. It is averred in the affidavit that the at the request of the petitioner's counsel, the matter was passed over in the morning. In the evening, due to Samaikyandra Agitation by the Court staff as well as the Advocates, as there was no representation on behalf of the petitioner, the appeal was dismissed on that day. Therefore, on account of abstaining work due to Samaikyandhra agitation by the Court staff and Advocates, the petitioner could not file a petition under Order XLII Rule 19 CPC immediately. Thus, the petitioner was prevented by a cause beyond the control of the petitioner and prayed to condone the delay.

The respondent filed counter denying material allegations contending that the petitioner was claimant in E.A.175 of 2007

and the said claim petition was dismissed on 24.05.2009 on merits. The claimant preferred appeal before the High Court with a view to delay and defraud respondent in A.S.No.335 of 2009 and on condition of deposit of Rs.1,00,000/- stay was granted. However, the petitioner failed to comply orders of the Court, stay was vacated on 25.06.2010. In the meanwhile, the Trial Court had conducted auction and the respondent became highest bidder in the auction and the sale was confirmed and possession of property was delivered to the respondent thereby A.S.No.34 of 2011 became infructuous. Further, as the petitioner failed to explain the inordinate delay of 192 days, the petition is liable to be dismissed.

The Trial Court dismissed the petition concluding that the cause shown by the petitioner is not sufficient cause which prevented the petitioner to file a petition. Since the petitioner took inconsistent pleas which are mutually destructive, the Appellate Court declined to condone the delay in filing a petition and consequently dismissed the petition.

Aggrieved by the order passed by the Appellate Court, this civil revision petition is filed on various grounds, mainly contending that the cause shown by the petitioner is sufficient cause, which prevented him from filing the petition, as Advocates and Court staff were abstaining from work on account of Samaikhyandra agitation, as observed in the order of the Appellate Court. But, the Appellate Court did not consider the same in a proper perspective and committed an error in dismissing the petition.

During hearing, learned counsel for the revision petitioner Sri M. Ram Mohan Reddy while reiterating the contentions raised

before the Appellate Court, requested this Court to afford one more opportunity to contest the appeal and decide the same on merits. Whereas, Sri N. Siva Reddy, learned counsel appearing for the respondents opposed the petition while supporting the orders passed by the Appellate Court.

Considering the rival contentions and perusing the material available on record, the sole point that arises for consideration is ***“whether the petitioner was prevented by sufficient cause which is beyond his reasonable control in filing petition under Order XLII Rule 19 of C.P.C. If so, whether delay in filing the petition to re-hear the appeal under Order XLII Rule 19 C.P.C is correct?”***

The contentions raised before the Trial Court is that on the date of dismissal, the petitioner was not well and he was suffering from viral fever. But, the advocate appeared and represented the matter and requested to pass over and at the end of day, there was no representation and consequently, the Trial Court dismissed the appeal. The petitioner explained the reason for his failure to appear on the date of dismissal before the Court. The inability of the petitioner to file an application under Section 5 of Limitation Act was due to Advocates and Court staff abstaining Court work due to Samaikhyandra agitation from 31.07.2013. The appeal was dismissed on 23.07.2013. But, the advocates started abstaining Courts from 31.07.2013 and nothing prevented the petitioner from filing an application under Order XLI Rule 19 CPC between 23.07.2013 to 31.07.2013 and no explanation was offered for his inability to file an application. Even if the advocates and staff were abstaining from attending Courts, the Officers were attending the

Courts and nothing prevented the petitioner from filing an application in the Court itself when the Officer is presiding the Court. But, leisurely, the petitioner filed a petition after more than 192 days. Even otherwise, the contention of the petitioner that on account of agitation, the advocates boycotted the Courts, it is not a sufficient cause, as the advocates are not expected to boycott the Courts.

An Advocate is only an agent of the client and when the agent is not in a position to represent the principal, the principal can straight away represent the matter and file an application. In the absence of any explanation for his failure to file an application in person, the petition cannot be allowed and it is contrary to the law declared by Apex Court. Curiously, the ground raised by the petitioner for condonation of delay is not sufficient cause, as it was not beyond his reasonable control. Therefore, I find that the Trial Court did commit no error in dismissing the petition and even this Court is unable to find any reason warranting interference with the findings recorded by the Trial Court. Hence, the petition is devoid of merits and deserves to be dismissed.

In the result, the civil revision petition is dismissed.

Consequently, miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Dated 14.06.2017

SP