

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.351 of 2015

ORDER :

This revision is filed under Section 115 of the Civil Procedure Code, 1908, by the petitioner-defendant, challenging the order passed by the Principal Senior Civil Judge, Rajahmundry, in I.A.No.753 of 2014 in O.S.No.849 of 2012, dated 11.11.2014, whereby the learned Principal Senior Civil Judge, Rajahmundry, condoned the delay of four months four days subject to deposit of half of the decretal amount into the Court within one month therefrom.

2. The main contention of the petitioner is that while condoning the delay in an application filed under Section 5 of the Limitation Act, directing to deposit half of the decretal amount is onerous, thereby sought to set aside the impugned order passed by the learned Principal Senior Civil Judge, Rajahmundry.

3. During hearing, Ms.T.V.Sridevi, learned counsel for the petitioner, would draw the attention of this Court to the judgment in **Bathini Sambaiah v. Juluru Narayan**¹, wherein it is held that the trial Court cannot impose a onerous condition to deposit of decretal amount, if the Court finds that there is a sufficient cause, which prevented him from appearing before the Court.

4. None appeared for the respondent in spite of service of notice.

¹ 2002 (3) ALT 420

5. As seen from the averments made in the petition, the petitioner received summons from the Court in the suit, but those summons were misplaced and he forgot to attend the Court. But, after receiving summons in Execution Petition, the petitioner realized that he misplaced the suit summons and failed to engage advocate. The learned Principal Senior Civil Judge, Rajahmundry, observed that the petitioner did not exercise due diligence and utter carelessness, he did not appear and misplaced summons received from the Court and he also did not state that there are good grounds for him to succeed in the suit. The trial Court, after hearing both sides, made the following observation:

“The main suit in O.S.No.849/12 is for recovery of money based on promissory note that was decreed in favour of the plaintiffs. If at all, the petitioner intend to contest the suit to prove his bonafides, he has to deposit half of the decretal amount into this court, subject to the said condition, the petition can be allowed and the delay of four months four days can be condoned.”

6. While deciding an application under Section 5 of the Limitation Act, the duty of the Court is to record its satisfaction whether the cause shown by the petitioner for failure to appear before the Court is a sufficient cause, which prevented him to appear before the Court and if the Court satisfies that the petitioner was prevented by sufficient cause, or, a cause which is beyond reasonable control of the petitioner, the Court can condone the delay by exercising the discretionary power under Section 5 of the Limitation Act instead of

recording such satisfaction that the petitioner was prevented by a sufficient cause or a cause which is beyond reasonable control of the petitioner. The learned Principal Senior Civil Judge, Rajahmundry, directed to deposit half of the decretal amount, such direction is contrary to principle laid down by this Court in **CH. KRISHNAIAH v. CH. PRASADA RAO**².

7. Accordingly, the condition imposed by the trial Court to deposit half of the decretal amount to the credit of the suit within one month from the date of the order is hereby set aside while remanding the matter to the learned Principal Senior Civil Judge, Rajahmundry, to decide the petition afresh and record a finding whether the petitioner has made out sufficient cause and decide the petition in accordance with law within one month from the date of receipt of a copy of this order.

8. With the above direction, the revision is disposed of. No order as to costs.

9. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

18th April 2017

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² AIR 2010 AP 19 Full Bench