

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.3510 of 2011

ORDER :

Heard learned counsel for the petitioner/plaintiff, learned counsel for the respondents/defendants and perused the grounds urged in the revision petition and the dismissal order of the learned trial Judge of the application to condone the delay of 352 days in filing the application to set aside the default dismissal order of the suit for restoration in I.A.No.2660 of 2009 in O.S.No.242 of 2005, vide order, dated 03.02.2011.

2. Perused the petition and counter filed before the trial Court in passing the impugned order with reference to it.

3. No doubt, the approach to consider the existence of sufficient cause or not in condoning the application for delay is pragmatic. The fact that no party willfully allow his claim to become a stale, but for some reason. It is only to consider whether such reason is proper and reflected or not. It is not mere length of time, but for the cause to be shown is justified or not to construe the existence of sufficient cause or not from the pragmatic approach required to consider from the settled law.

4. So far as the facts of the case pleaded in the petition affidavit to set aside the default dismissal order of the suit by condoning the delay of 352 days concerned, on the alleged date 23.02.2017 when the matter is posted for the cross-examination of the plaintiff, he could not attend the Court due to ill health and the suit was dismissed for his

non appearance. His further submission is there are no willful latches or negligence for his non attending on that day and he is engaging another advocate Sri.A.Gopala Krishna, thereby prays to condone the delay.

5. The defendants/respondents opposed the petition saying mere alleged cause of ill-health is not a sufficient reason to condone the delay in the absence of showing any proof much less explanation for the delay of 352 days for each day.

6. The order of the lower Court pursuant to which is that the plaintiff has to explain the delay satisfactorily and not filed any document to show as he was suffering from ill-health and if at all it is continued till filing of the petition and from the statement of suffering from ill-health devoid of merits and is not a sufficient ground to condone the delay and the delay cannot be allowed liberally unless party approaching the Court shows sufficient cause to condone. Having regard to the above, there are no grounds to show sufficient cause in dismissal.

7. No doubt, as pointed out by the counsel for the revision petitioner, though it is one of the grounds urged in the revision petition that for the plaintiff's non attendance on the date for her cross examination, if at all the trial Court could have been closed the evidence of plaintiff as P.W.1 by treating with no value of the chief evidence by affidavit or otherwise, rather dismissal of the suit itself. No doubt there is force in the submission based on the maxim "*actus*

curiae neminem gravabit”. The other request is that the party will file a detailed affidavit before the trial Court and adduce evidence including on the period of ill-health of 2007 subject to availability for 10 years lapsed by now.

8. Coming to the facts, the suit is for recovery of money. Had the trial Court closed the evidence of PW.1 rather dismissal of the suit the fate could be otherwise. Once such is the case, to sub serve the ends of justice the dismissal order is liable to be set aside by remanding the matter to the trial Court with opportunity to the parties to file additional pleadings with any documentary evidence and to adduce any evidence to decide the petition on own merits afresh.

9. Accordingly and with above observations, the civil revision petition is allowed by remanding the matter to the trial Court to decide the matter afresh.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

7th November 2017.

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