

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.2410 OF 2017

ORDER:

The application filed by the defendant, invoking Section 5 of the Limitation Act to condone the delay of 206 days in filing the application Under Order IX Rule 9 of Civil Procedure Code, is dismissed by the learned Principal Senior Civil judge, Nellore, by an order dated 21.01.2017. Challenging the same, present Civil Revision Petition is filed.

2) I.A.No.530 of 2008 in O.S.No.23 of 2006 is filed Under Section 5 of the Limitation Act, seeking to condone the delay of 206 days in filing the application under Order IX Rule 9 C.P.C. is dismissed by the Court below after narrating the facts in detail. The Court below found that there was no diligence in prosecuting the case by the petitioner-plaintiff. The Court below also recorded that the application filed under Order IX Rule 9 C.P.C. in C.F.No.5870 was rejected on 07.01.2016 on account of the fact that the impugned I.A. order is dismissed. However, now it is brought to the notice of the Court that challenging the order dated 07.01.2016 in C.F.No.5870 an appeal has been filed before the Principal District Judge, Nellore in C.F.No.4515 of 2017 and the same is pending.

3) It is submitted by the learned counsel for the petitioner, as a matter of fact, learned counsel appearing before the trial Court has been suffering from serious ill-health and she has to undergo treatment with respect to the same, in the circumstances, the matter was entrusted to another advocate, who was bit negligent in prosecuting the case. In the circumstances, learned counsel for

the petitioner submits that the delay condonation may be made on terms.

4) Learned counsel appearing for the respondent vehemently opposed the contention of the petitioner and submits that on verification of the record indulgence has been shown by the Court to the plaintiff and the case is at the stage of cross-examination. In spite of ample opportunity given to the plaintiff, he had failed to avail the same and in the circumstances the Court below rightly dismissed the interlocutory application.

5) Having considered the respective submissions, there being no denial with respect to the advocate suffering from serious ailment of brain tumour and considering the fact that the delay is only 206 days and further considering that C.F.No.4515 of 2017 is pending against the order dated 07.01.2016 in C.F.No.5870 of 2016, the delay is condoned on payment of costs of Rs.5,000/-, payable to the defendants within ten days from the date of receipt of a copy of this order. It is also made clear that if the plaintiff does not proceed with the matter on day to day basis the Court shall be at liberty to proceed *ex parate*.

6) With the above direction, this Civil Revision Petition is allowed setting aside the impugned Order dated 21.01.2017 passed in I.A.No.53 of 2008 in O.S.No.23 of 2006 by the learned Principal Senior Civil Judge, Nellore. There shall be no order as to costs.

7) As a sequel, miscellaneous petitions pending, if any, shall stand closed.

CHALLA KODANDA RAM, J

Dated: 18.08.2017
Ssv