

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3041 OF 2017

ORDER:

This Civil Revision petition, under Section 115 of the Code of Civil Procedure, 1908 (for short 'CPC'), is filed challenging the order dated 16.03.2017 in I.A. No.6158 of 2016 in A.S.S.R. No.20270 of 2016 passed by the Chief Judge, City Civil Court, Hyderabad, wherein the appellate court dismissed the application filed by the petitioner under Section 5 of Limitation Act to condone the delay of 124 days in filing the appeal against the order rejecting the plaint.

The petitioner filed suit in O.S. No.1818 of 2011 raising several contentions and later the respondent filed I.A. No.1187 of 2013 under Rule 11 of Order VII of CPC. The said petition was allowed rejecting the plaint. Aggrieved by the order, the appeal is filed with delay condonation petition on the ground that he was suffering from acute dose lenon (lumbago) from 10.06.2016 to 25.07.2016. It is alleged in the petition that the petition was ordered on 28.03.2016, on the very next day he filed copy application to get certified copy of the order in I.A. No.1187 of 2013, and the copies were delivered on 18.04.2016. The petitioner obtained certified copy of order in I.A. filed under Rule11 of Order VII of CPC, but he could not apply for decree in the suit. Therefore, he filed another copy application vide C.A. No.15901 of 2016 on 06.08.2016 and later obtained copy of the decreetal order. Therefore, the cause which prevented the petitioner is beyond his

control and prayed to condone delay of 124 days in filing the appeal.

Respondent filed counter denying the material allegations, *inter alia*, contending that there are absolutely no grounds to condone delay as the petitioner is conscious about filing the appeal and filed copy application. Therefore, there is absolutely no cause which is beyond his control and prayed for dismissal of the petition.

Upon hearing argument of the petitioner in person and counsel for the respondent, the trial court disbelieved the cause shown by the petitioner as the petitioner did not explain reason for delay in filing of the appeal within time, having took plea that he obtained certified copy on 18.04.2016 and dismissed the petition.

Aggrieved by the order, the present civil revision petition under Section 115 of CPC is filed on various grounds mainly contending that the trial court did not consider the cause which is beyond his control and that the delay must be construed liberally since the petitioner appearing in person and prosecuting the proceeding and he was suffering from lumbago (hip pain) and produced a medical certificate issued by the Doctor P.Lakshmi Narayana Reddy, Orthopaedic Speciality Hospital, Nellore, in support of his contention, and requested this court to condone delay of 124 days in filing the appeal.

During hearing, the petitioner appeared in person, while reiterating the contentions, drawn the attention of this court to the Certificate issued by Doctor P.Lakshmi Narayana Reddy and once again requested this court to condone the delay, construing the cause liberally and prayed to allow the revision petition.

Sri B.V. Subbaiah, learned senior counsel appearing for the respondents, supported the order under challenge while contending that copy was obtained on 18.04.2016 nothing was prevented him to file appeal against the order, instead of prosecuting the proceedings, conveniently invented story of suffering from lumbago (hip pain). There are absolutely no bonafide reason and prayed for dismissal of the revision.

As seen from the allegations made in the affidavit, the petitioner is appearing as party in person and prosecuting the proceedings and when the plaint was rejected by order dated 28.03.2016, he consciously filed copy application immediately and the same was ordered on 29.03.2016 copies were delivered on 18.04.016, before closure of court for summer vacation, still 12 days time was available to file appeal against the order, but the reason assigned by the petitioner for his failure to file appeal is that he could not obtain certificate copy of the decree in the suit and thereby he applied for **certified** copy immediately on the reopening day and thereafter he suffered from hip pain. The petitioner is not a lay man, he is able to prosecute the proceeding since 2011 in the suit and other proceedings, he is conscious about the right to file appeal and obtained certified copy of the order in I.A. on 18.04.2016. Even assuming for a moment that though he could not obtained certified copy of the decree in the suit, it can be dispensed with under Rule 1 of Order XLI of CPC, which mandates the memorandum shall be accompanied by copy of the judgment, in view of the amendment by Act 46 of 1999 S.31 w.e.f. 01.07.2002. Therefore failure to obtain certified copy of the decree itself is not a ground to condone the delay. Even otherwise

he filed a copy application for certified copy of the decree on the reopening day, but conveniently invented the theory of suffering from hip pain and it is supported by medical certificate. However, the delay after obtaining certified copy on 18.04.2016 from the date of obtaining certified copy of order till the date of medical advice for bed rest from 10.06.2016 was not explained and obtained medical certificate on 16.08.2016 conveniently, to cover up his lapse.

To condone delay under Section 5 of the Limitation Act or under Rule 3A of Order XLI of CPC the petitioner must satisfy the court that he was prevented by sufficient cause which is not defined anywhere, but the sufficient cause can be construed the cause which is beyond his reasonable control from 18.04.2016 onwards, but did not file the appeal atleast on the reopening day of the court since the subject matter of the suit pertains to the period subsequent to amendment of Rule 1 of Order XLI of CPC. Therefore, the explanation offered by the petitioner is not sufficient ground to condone delay. Hence, I find that the rightly declined to condone delay of 124 days in filing the appeal. Even according to the Medical Certificate, the petitioner was advised to take bed rest from 10.06.2016 to 25.07.2016, but the appeal was filed before the court on 07.09.2016. Therefore the delay after completion of bed rest was not explained that he was prevented by sufficient cause.

The present revision is filed under Section 115 of CPC. The jurisdiction of this court under Section 115 of CPC is limited. According to Section 115 of CPC this court can interfere by exercising power of revision only when the trial court has exercised its jurisdiction not vested in it by law, or to have failed to exercise

jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity. But no such exercise of jurisdiction so vested or failure to exercise jurisdiction so vested or illegal exercise of jurisdiction, which are *sine qua non*, for exercising power under Section 115 of CPC. In the absence of any such ground, it is difficult to exercise power of revision under Section 115 of CPC interfering with the order under challenge. Consequently the civil revision petition is liable to be dismissed.

In the result, the civil revision petition is dismissed at the stage of admission. No costs.

Miscellaneous petition, if any, pending in the civil revision petition shall stand closed.

03.07.2017
BV

M.SATYANARAYANA MURTHY, J

