

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

C.R.P.No.1930 of 2017

ORDER

This revision is filed against the order dated 20.12.2016 passed in I.A.No.163 of 2016 in an un-numbered Appeal Suit (GR No.6673, dated 26.10.2015) by the Principal District Judge, Srikakulam, dismissing the petition filed under Order 41 Rule 3-A of CPC to condone the delay of 143 days in preferring the appeal.

2. It is stated in the affidavit filed in support of application that the petitioners herein filed a suit for cancellation of a preliminary decree passed in O.S.No.125 of 1984 on the file of Principal Senior Civil Judge, Srikakulam, dated 20.09.1988. The said suit was not numbered and at SR stage, the Court below, by order dated 16.04.2015, rejected the plaint on the ground that the suit is not maintainable. The petitioners under *bona fide* impression that revision lies against the said order, sent the file to the Advocate at Hyderabad for filing a civil revision petition. Subsequently, having come to know that it is an appealable order, the petitioners filed the present appeal before the Principal District Judge, Srikakulam, and in that process, the delay of 143 days occurred and therefore, they filed the condone delay application in preferring the appeal. It is also stated in the affidavit that due to old age and ill-health, the matter could not be presented by petitioners in time. The Court below resisted the grounds raised by petitioners and ultimately, dismissed the application by impugned order.

3. A perusal of the affidavit filed in support of condone delay application would show that the reasons for not preferring the appeal in time appears to be proper, but the Court below rejected the plaint without giving any opportunity to the petitioners to submit their case.

4. In that view of the matter, I deem it appropriate to condone the delay subject to certain terms.

5. In the result, the Civil Revision Petition is allowed, setting aside the order dated 20.12.2016 passed in I.A.No.163 of 2016 in an un-numbered Appeal Suit (GR No.6673, dated 26.10.2015) by the Principle District Judge, Srikakulam, subject to condition that the petitioners/appellants shall pay costs of Rs.5,000/- (Rupees five thousand only) to the District Legal Services Authority, Srikakulam, within two weeks from the date of receipt of a copy of this order, and on filing proof of such deposit, the learned Principal District Judge, Srikakulam, shall take the appeal on file and dispose of the same on merits, as expeditiously as possible, in accordance with law. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

11th August, 2017
sj

M.S.K.JAISWAL,J