

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.3995 of 2012

ORDER:

The defendants in O.S.No.129 of 2007 on the file of the Court of the Junior Civil Judge, Anarpathi, East Godavari District are the petitioners in the present revision filed under Section 115 of the Code of Civil Procedure.

2. This revision, assails the order dated 11.07.2012 passed by the said Court in I.A.No.114 of 2011 filed by the petitioners herein under Section 5 of the Limitation Act seeking condonation of delay of 913 days in filing an application under the provisions of Order 9 Rule 13 of the Code of Civil Procedure.

3. Heard the learned counsel for the petitioner Sri N.Siva Reddy and the learned counsel for the respondent Sri N.Vijay.

4. O.S.No.129 of 2007 filed by the respondents herein was decreed *ex parte* by the Court below on 01.08.2007. Seeking to set aside the *ex parte* decree petitioners herein filed an application and along with the said application the present petition under Section 5 of the Limitation Act was also filed praying for condonation of delay of 913 days in filing the application under Order 9 Rule 13. The learned Junior Civil Judge, Anaparthi, dismissed the said application by way of the order under challenge.

5. According to the learned counsel for the petitioners the order impugned is erroneous, contrary to law and opposed to the provisions of Section 5 of the Limitation Act. It is further submitted by the learned counsel that the Court below did not properly consider the explanation offered in the affidavit filed in support of the application for the delay and

had the contents of the affidavit been considered in a proper perspective the questioned order would not have emanated. It is the further submission of the learned counsel for the petitioners that the Court below ought to have adopted liberal approach and ought to have condoned the delay so as to enable the petitioners herein to prosecute the suit on merits.

6. On the contrary, it is contended by the learned counsel for the respondents that there is no illegality nor there exists any infirmity in the impugned order and in the absence of the same the order impugned is not amenable for any correction under Section 115 of the Code of Civil Procedure by this Court. It is further submitted that since the Court assigned cogent and convincing reasons for disallowing the application, the interference of this Court is not warranted.

7. In the above background, now the issue that arises for consideration of this Court is_ “Whether the order passed by the Court below is in accordance with law or whether the same warrants interference of this Court under Section 115 of the Code of Civil Procedure?

8. In the affidavit filed in support of the writ petition, the petitioners herein stated that the first petitioner is a lorry Driver and he went to other State to work as driver on the lorry and the rest of the defendants have no knowledge about the suit litigation and he came to the village recently and met the advocate who informed him about the *ex parte* decree and his absence was neither willful nor wanton.

9. The respondents herein resisted the said application by way of filing a detailed counter.

10. It is significant to note that seeking enforcement of the decree dated 01.08.2007, on 21.11.2008 respondents herein filed execution petition vide

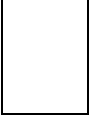
E.P.No.316 of 2008 wherein the petitioners received the notices from the Court of the Principal Junior Civil Judge, Ramachandrapuram and engaged an advocate on 05.02.2009. It is also not denied in the counter filed by the plaintiff in the present application that thereafter the petitioners kept on taking adjournments for filing counter in the E.P and the matter adjourned for five times. Admittedly, the present application was filed on 02.03.2010. There is also no reason assigned in the affidavit for non-filing of the present application even after receipt of the notice in the E.P., immediately. Obviously, taking into consideration all these aspects, the Court below refused to condone the delay and dismissed the application filed by the petitioners herein on the ground that the petitioners did not show sufficient reason or ground for condonation of delay. Therefore, this Court is not inclined to meddle with the order passed by the Court below in the absence of any error. Miscellaneous petitions, if any pending, in this civil revision petition shall stand closed. No order as to costs.

11. For the aforesaid reasons, the Civil Revision Petition is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 31.08.2017

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



C.R.P.No.3995 of 2012

Dated 31.08.2017

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