

HON' BLE SRI JUSTICE SURESH KUMAR KAIT

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HON' BLE SRI JUSTICE N. BALAYOGI

A.S.M.P.No. 2165 of 2017 in A.S. No. 878 of 2017

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A.S. No. 878 of 2017

JUDGMENT:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

This Miscellaneous Petition is filed seeking to condone the delay of 316 days in filing the appeal.

It is stated in the accompanying affidavit that the petitioner – defendant No.7 came to know about the decree only when notice in the execution petition was served on her. Before that after receipt of suit summons, she engaged an advocate and got filed written statement in the suit. Her advocate before the trial Court informed that the trial in the suit would be taken up in due course and she would instruct him to defend the suit only when trial commences. After the written statement is filed, she fell severely ill since her back pain aggravated to such a state that she could not move out from the bed. Then she went to her parents' place at Kamavarapukota village near Eluru and took continuous treatment in KAY VEE Hospital in Eluru, as such, she could not contact her advocate who was defending her case before the trial Court. Her doctor advised her to take complete bed rest. Due to these reasons, the delay of 316 days occurred in filing the appeal.

Respondent Nos.1 and 2 – plaintiffs have filed counter affidavit to the petition stating that the petitioner is not diligent in prosecuting the matter even during pendency of the suit. The petitioner was set *ex parte* for not filing written statement vide order dated 24.07.2012. When the suit was coming up for issues, the petitioner filed I.A.No. 228 of 2013 along with written statement and the trial Court was pleased to allow the application and received the written statement on record by order dated 11.06.2013. Thereafter, the suit was posted for trial on 23.03.2015 and chief affidavit of PW1 was filed on 31.08.2015. Accordingly, the matter was posted on 09.09.2015 for cross-examination of PW1. Since then, the petitioner has failed to prosecute the above matter.

As stated in the present petition, she suffered from back ache and took treatment in KAY VEE Hospital in Eluru. To this effect, medical certificate is also placed on record wherein it is mentioned that she was taking treatment for the past six months and she was advised to take bed rest, due to which, the delay has occurred.

In view of the reasons stated in the accompanying affidavit and the submissions of the learned counsel for both the parties, it is established that after 09.09.2015 the petitioner failed to appear before the trial Court, but admitted case is that she filed written statement and pursued

the matter through her counsel. Due to non-appearance from 09.09.2015, the petitioner has caused inconvenience to the respondents.

However, keeping in view the reasons explained for the delay and the submissions of the learned counsel for the petitioner – defendant No.7, we hereby condone the delay of 316 days in filing the appeal subject to payment of costs of Rs.5,000/- (Rupees Five Thousand Only) to be paid to respondent Nos.1 and 2 - plaintiffs within a period of two weeks from today.

Accordingly, this petition is allowed.

A.S.No. 878 of 2017

The Appeal Suit is filed against the decree and judgment dated 12.07.2016 passed in O.S.No. 89 of 2012 by VII Additional District and Sessions Judge, Vijayawada whereby the suit filed by respondent Nos.1 and 2 - plaintiffs has been decreed against the appellant –defendant No.7.

It is not in dispute that the appellant contested the suit and filed written statement and continued to represent the matter through her advocate till 09.09.2015. Thereafter, she fell ill due to which she was bedridden and took treatment from KAY VEE Hospital in Eluru.

Keeping in view the grounds raised in the appeal and the fact that the appellant could not defend her case before the

trial Court for the aforementioned reasons and in view of the submissions of the learned counsel for the parties, we hereby set aside the judgment and decree dated 12.07.2016 passed in O.S.No. 89 of 2012 against the appellant – defendant No.7. Consequently, we hereby direct VII Additional District and Sessions Judge, Vijayawada to decide O.S.No. 89 of 2012 afresh, so far as defendant No.7 is concerned, on merits, after affording opportunities to the parties. Inasmuch as the suit is of the year 2012, the learned Judge is directed to dispose of the suit as expeditiously as possible.

With the above observation, the appeal is disposed of.
No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

15.09.2017

SURESH KUMAR KAIT, J

bcj

N. BALAYOGI, J