

HON' BLE SRI JUSTICE D. V. S. S. SOMAYAJULU

C.R.P. No. 16 of 2012

ORDER:-

This Civil Revision Petition is filed against the order dated 28.11.2011 in I.A.No. 777 of 2010 in O.S.No. 307 of 2007 passed by I Additional Junior Civil Judge, Machilipatnam.

The case of the petitioner is that he engaged a lawyer by name G.Mohana Rao who informed the petitioner that he should only appear when his presence is absolutely necessary. It is stated that the petitioner came to know that recently his advocate fell sick and later passed away, and thereafter, he came to be aware of the dismissal of the suit for default on 03.12.2009. Hence, the petitioner filed an application to set aside the order of dismissal for default along with I.A.No. 777 of 2010 which is filed under Section 5 of the Limitation Act to condone the delay of 347 days in filing the application to set aside the order of dismissal for default.

The 2nd respondent filed counter in the trial Court *inter alia* stating that the docket orders prior to the date of dismissal of the suit clearly reveal that there is no diligence on the part of the petitioner to prosecute the case. It is also stated that apart from Sri G.Mohan Rao, there is another senior advocate by name Sri M. Ram Das who also holds vakalat in the case.

Heard the learned counsel for both the parties and perused the material placed on record.

The order of the trial Court dated 28.11.2011 is a reasoned order. As can be seen from paragraph Nos.7.1 and 7.2 of the impugned order, it is apparent that the suit has been coming up for trial from 13.08.2007 onwards and in spite of the fact that 30 adjournments were granted also by passing conditional orders while imposing costs, for a period of two years and four months, the petitioner did not file his affidavit in lieu of chief examination. It is thus apparent that the petitioner was not diligent.

It is difficult to believe that even when the matter was posted on conditional orders by imposing costs, the advocates did not contact the party. Also, as rightly pointed out by the learned counsel for the respondents, the petitioner cannot also throw the blame on the deceased advocate and seek condonation of the delay.

The causes stated do not appear to be genuine. Even though every day's delay need not be explained, still the explanation put forth should convince the Court. It is not the length of the delay but the explanation for the delay that is important. In this case, the explanation advanced to condone the delay is not convincing. Therefore, this Court does not see any reason to interfere with the impugned order.

Hence, there is no merit in the Civil Revision Petition, and the same is, accordingly dismissed. No order as to costs.

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

D.V.S.S.SOMAYAJULU,J

20.10.2017

bcj

