

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.3847 of 2017

ORDER:

Heard Mr Butta Vijaya Bhasker for Revision petitioner and Mr.K.Seetharam for auction purchaser in E.P.No.24 of 2002. The other respondents though received notice have not entered appearance.

The Revision petitioner filed E.A.No.112 of 2006 in E.P.No.24 of 2002 in O.S.No.61 of 2001. On 08.07.2008, E.A.No.112 of 2006 was dismissed for default. On 16.08.2008, the petitioner filed E.A.No.152 of 2008 to condone the delay of 18 days in filing an application to set aside the default order dated 08.07.2008.

The learned Senior Civil Judge through order dated 04.06.2011 rejected the prayer for condoning the delay. Hence, the Civil Revision Petition.

Mr. Butta Vijaya Bhasker contends that fundamental mistake committed by the Executing Court is reflected from the conclusions recorded in the order dated 04.06.2011, namely, the petitioner failed to explain the delay and he is not entitled for condonation of delay of 48 days. According to him, the Executing Court committed an error by including a 30 day period available to a party to file the application. He

relies on affidavit filed in E.A.No.152 of 2008 and contends that for explaining 18 days delay, the Executing Court has put the Revision petitioner on unreasonable test and thereby reflected its discretion available in the matters of condoning delay occurred in filing applications for condonation or setting aside default orders etc. He prays for allowing the Revision, condone the delay and also other applications pending for setting aside the docket order dated 08.07.2008.

Mr. K.Seetharam appearing for auction purchaser opposes the prayer in the Revision by contending that the case on hand is another example of telltale ordeal either to a decree holder or the auction purchaser in execution proceedings. He relies on the order impugned in the Revision. Firstly he contends that no ground is made out for condoning the delay and alternatively the condonation of delay cannot and could not be without costs.

After taking note of the dates which have bearing in considering the delay, this Court is of the view that delay in filing a petition is only 18 days, but prayer is refused for petitioner failed to explain 18 days delay in filing an application for setting aside the default order.

Even assuming that the Revision petitioner is required to sufficiently state for condonation of 18 days delay, this Court

is of the view that the petitioner ought to have been more diligent in prosecuting claim petition filed in E.A.No.112 of 2006.

After perusing the record, I am satisfied that the findings recorded by the Executing Court are not tenable and accordingly are set aside. The prayer in E.A.No.152 of 2008 is allowed and to avoid further delay, the Executing Court is directed to pass necessary orders setting aside the docket order dated 08.07.2008 subject to the condition of Revision petitioner depositing a sum of Rs.5,000/- by way of Demand Draft with the Advocates Association, Adoni within four (04) weeks from today. The Executing Court on filing of proof of complying with the condition, is directed to dispose of claim petition within six (06) weeks thereafter and EP subject to outcome of claim petition, within further period of six (06) weeks, without fail. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 12.10.2017
Note: CC in 2 days.
(B/o) dv

