

HON' BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.5291 of 2013

ORDER:

This revision petition is filed by the petitioner under Section 115 of CPC questioning the orders dated 19.09.2013 in I.A.No.539 of 2012 in O.S.No.719 of 2010 on the file of the Court of III Senior Civil Judge, City Civil Courts, Secunderabad.

Heard both the counsel.

A perusal of the record reveals that the respondent-bank filed O.S.No.719 of 2010 on the file of the III Senior Civil Judge, City Civil Court, Secunderabad, against the petitioner herein for recovery of an amount of Rs.3,93,675/- . The petitioner herein engaged a counsel and filed vakalat. For one reason or other, the petitioner did not choose to file written statement. As such, the petitioner was set *ex parte*. The trial Court having no other alternative, allowed the suit on 04.11.2011. On 26.03.2012, the petitioner filed I.A.No.539 of 2012 under Section 5 of the Limitation Act to condone the delay of 147 days in filing a petition setting aside the *ex parte* decree. The trial Court after affording a reasonable opportunity dismissed the I.A. on the ground the petitioner failed to prove that his mother was taking treatment at the relevant point of time. Along with CRP, the petitioner filed documents to prove that his mother was taking treatment at the relevant point of time. Merely because the mother of the petitioner was taking treatment, that itself is not a valid ground to allow the petition. This Court is very much conscious that the approach of the Court should be pragmatic and not pedantic. That does not mean that the Court shall allow the petitions filed under Section 5 of the Limitation Act without proper scrutiny. If

the petition is allowed unconditionally, it may cause untold hardship to the respondent-bank, which is dealing with public money. If the petition is dismissed, it may not be possible for the petitioner to ventilate his legitimate and legal grievance.

Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to allow the petition on imposing certain conditions. Accordingly, the orders dated 19.09.2013 in I.A.No.539 of 2012 in O.S.No.719 of 2010 are hereby set aside. Consequently, I.A.No.539 of 2012 is allowed on a condition the petitioner shall deposit an amount of Rs.1,00,000/- (Rupees one lakh only) to the credit of O.S.No.719 of 2010 on or before 02.03.2017. If the petitioner fails to comply with the orders within the time stipulated, I.A.No.539 of 2012 stands dismissed automatically. Miscellaneous Petitions pending, if any, shall stand closed.

3rd February 2017.
Rns

T.SUNIL CHOWDARY, J

