

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.271 OF 2017

ORDER:

This Revision is filed challenging the order dated 30.12.2016 in I.A.No.391 of 2015 in un-numbered AS of 2015 of the X Additional District Judge, Narsapur.

2) The first respondent filed O.S.No.10 of 2008 before the Senior Civil Judge, Narasapuram, against the petitioner and second respondent for recovery of an amount of Rs.4,67,369/- with subsequent interest and costs basing on a promissory note.

3) The petitioner engaged a counsel and contested the suit.

4) The suit was decreed on 03.08.2012 in favour of the 1st respondent.

5) I.A.No.391 of 2015 was filed before the X Additional District Judge, Narsapur, along with ASSR No.1987 of 2015 seeking condonation of delay of 1048 days in filing appeal against the judgment and decree dated 03.08.2012 of the Senior Civil Judge, Narasapuram.

6) The petitioner contended that after obtaining certified copy of the decree and judgment in O.S.No.10 of 2008, he approached one Advocate by name Palanki Rama Mohan Rao at Hyderabad in

October, 2012, to file an appeal against the trial Court judgment; that he paid Court fee and other charges also and handed over the lower Court record including certified copies of decree and judgment in the suit to Advocate's Clerk; after filing of E.P.No.196 of 2014, he again approached the said Advocate and informed him that E.P. has been filed to arrest him. He contended that said Advocate on 19.08.2015 filed the appeal against the judgment of the trial Court and also prepared application seeking condonation of delay in preferring the appeal. He also enclosed a copy of affidavit of said Advocate stating that the delay occurred due to mixing up of the record handed over by the petitioner with certain other case records and shifting of the advocate office from Nallakunta to Vidya Nagar in Hyderabad in January, 2013.

7) Counter affidavit filed by the first respondent opposing the application. He contended that the petitioner did not state when actually certified copy of decree and judgment were obtained and when actually the petitioner approached the Advocate in Hyderabad for preferring the appeal. It is also pointed out that the affidavit of the Advocate states that in October, 2012, before Dasara Vacation, the petitioner had handed over the bundle to his clerk and that the petitioner did not approach him till 18.08.2015, more than three years after handing over the bundle and this indicates that the petitioner was not diligent. It is also pointed out that the Advocate was not informed

by the petitioner about death of his father/D.1 on 10.02.2013. He also stated that since value of the suit is less than Rs.10 lakhs, the High Court had no jurisdiction to entertain the appeal and therefore the appeal could not have been presented in the High Court at all, and even after the High Court returned the file for presentation in proper Court, the appeal was preferred on 13.10.2015 with more than 47 days delay.

8) By order dated 30.12.2016, the Court below dismissed the said application. It held that after handing over the bundle in October, 2012, to the Advocate at Hyderabad for filing appeal, the present appeal was filed on 18.08.2015 before the High Court at Hyderabad, almost 3 years thereafter. It held that since the decree in O.S.No.10 of 2008 obtained by the second respondent is below Rs.5 lakhs, the High Court would have no jurisdiction to entertain the appeal, and even though the High Court returned it on 26.08.2015, it was not presented before the Court of the Additional District Judge till 13.10.2015. It, therefore, concluded that the petitioner want to drag on the proceedings to defeat the interest of the first respondent, who obtained decree on merits. It held that the petitioner is guilty of gross negligence in filing the appeal and the delay of more than three years is not liable to be condoned.

9) Assailing the same, this Revision is filed.

10) Counsel for the petitioner relied upon decision of the Supreme Court in *N.Balakrishnan v. M.Krishnamurthy*⁽¹⁾ and decision of this Court in *Ithagani Lachaiah and others v. Joint Collector and Additional District Magistrate, Nalgonda and others*⁽²⁾.

11) In *Balakrishnan (1 supra)* the Supreme Court held that length of delay is no matter, acceptability of the explanation is the only criterion and that the primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. It also held that law of limitation is founded on public policy and it is not meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. It also observed that the word 'sufficient cause' appearing in Section 5 of Limitation Act, 1963, should be liberally construed and if the explanation did not smack of *mala fides* or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor.

12) In *Lachaiah (2 supra)* the Court held that delay in filing an application for restoration of the writ petition, which had been dismissed for default, is liable to be condoned on payment of costs. It also held that the Court has to see under what circumstances the delay was caused and whether such delay is willful, wanton or negligent or whether sufficient cause is shown to condone the same.

¹ (1998) 7 SCC 123

² 2013 (4) ALD 667

13) From the facts narrated above, it is clear that judgment in O.S.No.10 of 2008 was delivered on 03.08.2012 by the Senior Civil Judge, Narasapuram, against the petitioner and second respondent. The suit amount is less than Rs.5 lakhs. In such a situation, the appeal would lie to the District Court within 30 days. In the present case, appeal was filed in the District Court on 13.10.2015 challenging the judgment and decree dated 03.08.2012 in O.S.No.10 of 2008. Assuming that the petitioner had handed over the papers to the Advocate P.Rama Mohan Rao at Hyderabad in October, 2012, it was his duty to verify what happened to filing of the appeal. Apparently, he had done nothing in the matter since the affidavit of the Advocate states that he contacted him on 18.08.2015 almost three years after the papers were handed over to him. It may be that the Advocate in good faith wanted to help the petitioner, but that does not absolve the petitioner of the responsibility in preferring the appeal within the time prescribed by law to the competent Appellate Court. He cannot just blame the Advocate for his negligence. The period of delay of more than three years is inordinate and in my opinion the petitioner was grossly negligent in pursuing the remedy of appeal against the judgment of the trial Court.

14) I, therefore, do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under

Section 115 of CPC. Accordingly, the revision fails. It is dismissed.

No costs.

15) As a sequel, pending miscellaneous petitions, if any, shall stand closed.

Justice M.S.Ramachandra Rao

3rd March, 2017.

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