

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2850 of 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order dt.03.07.2015 in I.A.No.3071 of 2012 in O.S.No.213 of 2011 passed by I Additional Chief Judge, City Civil Court, Secunderabad, whereby the petition filed by the petitioner/defendant under Section 5 of Limitation Act to condone the delay of 77 years in filing a petition under Order IX Rule 13 CPC was allowed subject to deposit of Rs.5,00,00,000/- (around 10% of the Decretal amount) so as to enable the petitioner to contest the suit.

The petitioner now contended before this Court that imposing of such pre-condition to deposit Rs.5,00,000/- is onerous and the trial Court while deciding an application under Section 5 of Limitation Act is to record its satisfaction about the cause that prevented of the petitioner is sufficient cause and issuing of such direction to deposit 10% of the suit amount is contrary to the settled law and prayed to set aside the order to the extent of direction to deposit the amount.

Sri Sharad Sanghi, learned counsel for petitioner, while reiterating his contentions urged in the grounds, placed reliance on a judgment reported in *Bathini Sambaiah v. Juluru Narayan*¹, wherein it was held that the trial Court cannot impose a onerous condition to deposit Decretal amount, if the Court finds that there is a sufficient cause, which prevented him from appearing before the Court.

Whereas, the learned counsel for respondent contended that the Court is supposed to record its satisfaction about existence of sufficient cause which prevented the petitioner from filing an application within the time allowed by the law, but instead of recording such finding, the trial Court passed a conditional Order which has not been complied with by the petitioner and there is no illegality in the order passed by the trial Court warranting interference of this Court while exercising power under Article 227 of the Constitution of India.

As seen from the allegations made in the petition, the petitioner was suffering from Hepotytis-B and hospitalized and lost track of the Case. The learned counsel for

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respondent has pointed out certain facts and drawn the attention of this Court about verification of the affidavit and filing of a petition etc., but while exercising jurisdiction under Article 227 of the Constitution, this Court cannot look into those facts since it is supervisory in nature. However, imposing of condition to deposit 10% of the suit amount i.e., Rs.5,00,000/- while condoning the delay without recording the reason for condonation of delay, more particularly, sufficient cause, which prevented the petitioner from filing an application within the time allowed by the Law, is contrary to law laid down by this Court in *CH. Krishnaiah v. Ch. Prasada Rao*²

As seen from the order, it is evident that the trial court did not record any reason, as required under Section 5 of Limitation Act, to condone the delay of 77 days, but passed a cryptic order directing the petitioner to deposit Rs.5,00,000/- equivalent to 10% of the suit amount, which is contrary to law, and therefore, the Order is bereft of any reason regarding sufficient cause, which prevented the petitioner from filing a petition within the time allowed by Law. Therefore, the order is liable to be set aside. However, since the Order is silent about the main

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requirement under Section 5 of Limitation Act, the matter is remanded to the trial Court to pass an Order afresh in accordance with law, strictly adhering to the requirement under Section 5 of Limitation Act, within two months from the date of receipt of a copy of this Order.

With the above direction, this Civil Revision Petition is disposed of.

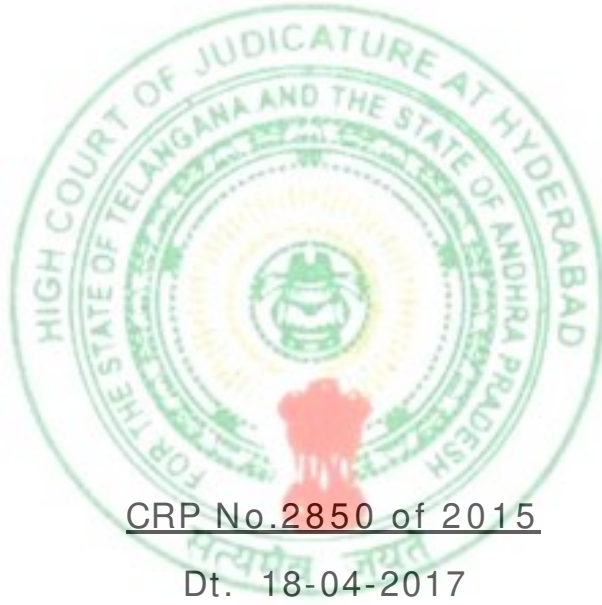
As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

Date: 18-04-2017.
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M. SATYANARAYANA MURTHY, J



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