

HONOURABLE SRI JUSTICE RAJA ELANGO

CIVIL REVISION PETITION No.3995 OF 2017

ORDER:

The present civil revision petition is filed by the petitioner challenging order, dated 20.06.2017, passed in I.A.No.714 of 2014 in OS No.75 of 2009 by the Senior Civil Judge, Peddapuram, East Godavari District, wherein the learned Judge, dismissed the application of the petitioner for condoning the delay of 822 days in preferring the application for setting aside the order dismissing the suit for default on 03.11.2011.

It is the case of the petitioner – plaintiff that he filed the suit for recovery of money against the respondents – defendants. The suit is coming up for further his evidence 03.11.2011. Due to the ill health of his sister, the petitioner took her to Rayavelluru for treatment and held up there and hence, he could not adduce further evidence. On that date, the suit was dismissed for default. Thereafter, the petitioner filed an application to set aside the said dismissal order along with an application for condoning the delay of 822 days in filing the application to set aside the dismissal order passed on 03.11.2011. The Court below dismissed the condone delay application on the ground that the day to day delay was not properly explained by the petitioner for condoning the delay occurred. Challenging the same, the present revision petition is filed.

Heard and perused the material available on record.

The main contention raised by the learned counsel for the petitioner is that the Advocate before the Court below could not prosecute the matter properly, and that for the said act, the petitioner

lodged a complaint before the Bar Association and subsequently, he has withdrawn the same due to intervention of the well-wishers, and that when the suit has come up for further examination of the plaintiff, the same was dismissed for default.

Since the delay caused in filing the application for setting aside the dismissal order is not willful and that due to the health condition of his sister, the petitioner could not able to attend the Court, an opportunity can be given to the petitioner to prosecute his case. Hence, this Court is of the view that by imposing some costs on the petitioner, the delay can be condoned and the dismissal order passed in the suit can be set aside.

Accordingly, the Civil Revision Petition is allowed and order, dated 20.06.2017, passed in I.A. No.714 of 2014 in O.S No.75 of 2009 by the Senior Civil Judge, Peddapuram, East Godavari District, is set aside, and consequently, I.A. No.714 of 2014 is allowed condoning the delay, and also the application for setting aside order, dated 03.11.2011, dismissing the suit for default, is allowed and the suit is restored to file, subject to payment of costs of Rs.10,000/- (Rupees ten thousand only) by the petitioner before the trial Court, on or before 15th October, 2017.

No order as to costs. Miscellaneous petitions, pending if any, shall stand closed.

RAJA ELANGO, J

August 30, 2017.
KTL