

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

C.R.P.No.5044 of 2017

ORDER

This revision is filed against the order dated 29.06.2017 passed in I.A.No.273 of 2016 in O.S.No.3 of 2016 by the learned Junior Civil Judge, Tekkali, dismissing the petition filed under Section 5 of Limitation Act, to condone the delay of 165 days in filing a petition to set aside the *ex parte* decree.

2. Respondent/plaintiff filed suit in O.S.No.3 of 2016 for recovery of amount of Rs.2,06,240/- with interest and costs on the basis of promissory note dated 31.12.2012 said to have been executed by petitioner/defendant. When the suit was posted to 01.04.2016 for filing written statement, there was no representation for defendant and hence, he was set *ex parte* and the matter was posted for judgment to 17.06.2016, on which date, the trial Court recorded the *ex parte* evidence and decreed the suit with costs. It is stated that the petitioner engaged an advocate from Vizianagaram, but due to ill-health, he could not contact his counsel for furnishing details. He enclosed the written statement along with the impugned application. By order impugned, the trial Court having held that there was abnormal delay of 165 days in filing the petition and no medical certificate was filed to prove the ill-health dismissed the petition.

3. Heard both sides and perused the material on record.

4. Learned counsel for petitioner submits that the petitioner has shown sufficient cause for the delay and he was unable to contact

his counsel to give instructions due to ill-health and the delay occurred in filing the petition was not intentional.

5. Learned counsel for respondent contended that the delay was not satisfactorily explained by petitioner and the petition is filed to drag on the execution proceedings.

6. It is stated in the affidavit that due to sickness, the petitioner was unable to contact his counsel to give details for filing written statement and as such, there was no representation on his behalf on 01.04.2016 and that on 17.06.2016, the trial Court decreed the suit *ex parte*. The explanation for delay given by petitioner in the affidavit is just and reasonable so as to afford opportunity to the petitioner/defendant to contest the suit on merits. However, the delay of 165 days can be condoned subject to certain terms.

7. In the result, the Civil Revision Petition is allowed, setting aside the order dated 29.06.2017 passed in I.A.No.273 of 2016 in O.S.No.3 of 2016 by the Junior Civil Judge, Tekkali, and I.A.No.273 of 2016 is allowed and the suit is restored to file subject to condition that the petitioner/defendant shall deposit a sum of Rs.30,000/- (Rupees thirty thousand only) to the credit of the suit, and on such deposit, the said amount shall be kept in fixed deposit till disposal of the suit. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.JAISWAL,J

20th October, 2017

Note:

Issue CC in one week

sj