

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**CIVIL REVISION PETITION No.1234 OF 2013****ORDER:**

This Civil Revision Petition is filed against the order dated 17.10.2013 passed in I.A.No.2140 of 2012 in unnumbered C.M.A.No. ____ of 2012 on the file of the Court of Principal District Judge, Visakhapatnam.

The brief facts of the case according to the petitioner are as follows:

The petitioner herein is the appellant in the unnumbered C.M.A. The petitioner filed a suit i.e., O.S.No.1768 of 2011 and an I.A.No.837 of 2011 was filed therein seeking temporary injunction. The said I.A was dismissed on 02.03.2012 on the ground of non compliance of Order 39 Rule 3 of C.P.C. Against the said order the petitioner could not file an appeal immediately as he was suffering with viral infection and that being an aged person he could not move out of the bed and could not instruct his counsel for filing a copy application for filing of the appeal. It is further stated that after he recovered, he instructed his advocate to file a copy application and the same was filed on 26.06.2012 and the same was made ready on 31.08.2012. The appeal was filed on 03.09.2012 with a delay of 86 days.

A counter affidavit has been filed by the 1st respondent herein to the said I.A stating that no piece of paper was filed in the Court to show the *bonafides* and that the petition is liable to be dismissed.

The said I.A.No.2140 of 2012 in unnumbered C.M.A.No.____ of 2012 was dismissed on 17.10.2012 observing

that the petitioner kept quite for nearly three months and has come up with a petition and that the reasons stated by him in the affidavit are neither convincing or satisfactory.

Heard.

As seen from the record and the affidavit filed by the petitioner, the petitioner who was aged about 76 years stated that he was not well and he explained the delay giving the details. As the petitioner is 76 years old and as the delay has been explained, the civil revision petition is allowed setting aside the order dated 17.10.2013 passed in I.A.No.2140 of 2012 in unnumbered C.M.A.No. of 2012 on the file of the Court of Principal District Judge, Visakhapatnam.

Accordingly, the civil revision petition is allowed directing the Court below to number the unnumbered C.M.A. No order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

Date:27.10.2017.
Gk.

KONGARA VIJAYA LAKSHMI,J

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

CIVIL REVISION PETITION No.1234 OF 2013

Date:27.10.2017

Gk

