

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.1897 of 2017

ORDER:

Challenge in this revision is the order dated 20.02.2017 in I.A.No.709 of 2016 in unnumbered O.S.No. of 2016 passed by the Principal District Judge, Kadapa allowing the petition filed by the respondents/plaintiffs under Section 151 CPC to condone the delay of 113 days in representing the plaint.

2) Respondents/plaintiffs filed the suit basing on the agreement of sale dated 28.01.2012. The plaint was returned 27.01.2016 on certain objections to be complied within 7 days. The plaint was represented by the plaintiffs with a delay of 113 days by assigning the reasons that the bundle was misplaced in the office records of their counsel and there was no wilful negligence on their part. Notice was ordered to the petitioner/defendant who filed his counter and opposed the petition. The trial Court, however, having been satisfied with the explanation offered by the respondents/plaintiffs for delay allowed the petition and condoned the delay, by imposing costs of Rs.1,000/- payable to the District Legal Services Authority.

Hence, the instant CRP.

3) Heard learned counsel for petitioner. No representation for respondents.

4a) The 1st contention of the petitioner/defendant is that with regard to alleged mix up of suit bundle with the other bundles, the affidavit of

respondents/plaintiffs alone was filed but not of their counsel and hence the trial Court ought not to have believed their version.

b) Secondly, it is contended that I.A.No.709 of 2016 was filed only to seek condonation of the delay in representation of the matter. However, no separate petition was filed by the plaintiffs under Section 149 CPC for condoning the delay in paying the deficit court fee which was one of the objections taken by the Court while returning the file. Hence, I.A.No.709 of 2016 ought not to have been allowed.

5a) This Court finds no merit in the aforesaid objections. The reason assigned for delay in representation was that the suit bundle was mixed up with the other bundles in the office of plaintiffs' counsel. Plaintiffs are the suitable persons to explain the reason for delay because they are the suitors. Ofcourse, their counsel can buttress the plea of respondents/plaintiffs by filing an additional affidavit. Merely because the affidavit of the counsel is not filed, that cannot be a ground to dismiss the petition particularly when the Court found truth in the submission of the respondents/plaintiffs.

b) The other contention is concerned, the same also does not hold water. When the trial Court allowed the petition seeking condonation of delay in representing the plaint, it shall be deemed that it has also condoned the delay for payment of court fee within the time grant by it. Therefore, there is no point in contending that a separate application under Section 149 CPC was not filed and thereby I.A.No.709 of 2016 is not maintainable.

6) In similar circumstances, a learned Judge of this High Court in *Nalluri Singaiah vs. Bandlapati Kishore Babu*¹ held that when the trial Court allowed the petition seeking condonation of delay in representing the plaint it is deemed that it has condoned delay of payment of court fee within the time granted by it. The learned Judge observed thus:

“In Mannanlal v. Chhotaka Bibi (dead) by LR. B. Sarda Shankar and Ors. MANU/SC/0016/1970:[1971]1SCR253, the Apex Court clearly held that Court has such power under Section 149 CPC. Though reasons for nonpayment of Court fee within the time are not explained in the affidavit filed in support of LA. No. 1030 of 2003, since ground for the delay in representation is misplacement of the bundle, it should be deemed that the trial Court was satisfied that it was reason for non-payment of Court fee within time and so I find no grounds to interfere with the order dismissing the petition filed by the revision petitioner.”

7) In *A.Nawab John vs. V.N.Subramaniayam*² the Apex Court observed that judicial discretion under Section 149 CPC must not be exercised in a manner to confer an unfair advantage on one of the parties to litigation. In the case on hand, in the considered view of this Court, the trial Court has exercised its jurisdiction judiciously. I find no merits in the CRP and accordingly the same is dismissed. No costs.

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

U. DURGA PRASAD RAO, J

Date: 22.08.2017

Murthy

¹ 2006 (4) ALD 347 = 2006 (4) ALT 554

² (2012) 7 SCC 738