

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

C.R.P.No. 1441 of 2011

ORDER:

This Revision Petition is directed against the Order, dt.01.03.2011 passed by the learned District Judge, Guntur in I.A.No.5788 in an un-numbered Appeal Suit filed by the Petitioner/ Defendant seeking to condone the delay of 381 days in preferring the appeal against the Judgment and Decree dated 12.10.2009 in O.S.No.278 of 2008 on the file of the Additional Senior Civil Judge, Tenali, which was filed by the respondent/ plaintiff for recovery of money based on three promissory notes. The trial Court has decreed the suit. Aggrieved thereby, the defendant has preferred the first appeal, but in doing so there was a delay of 381 days. Therefore, I.A.No.5788 of 2010 was filed to condone the delay in filing the first appeal, stating the said delay came to be occasioned, due to the ill-health of his mother, and that the file was misplaced, which can be located only after the attachment order was served on him, and hence prayed to condone the delay.

2. The said application was opposed by the plaintiff contending that the grounds raised for the delay are untenable. The said contention of the respondent/ plaintiff was found favour by the Appellate Court and thus the application came to be dismissed. Aggrieved thereby, the present revision petition is filed.

3. It is contended by the petitioner that the suit was for recovery of money, which was decreed and consequently an appeal was filed before the appellate Court, but in the circumstances stated there is a delay in filing the appeal. But the learned Appellate Court refused

to condone the said delay. It is submitted that the rights of the parties are involved in the matter, and therefore, the delay is to be condoned, and an opportunity can be afforded to the revision petitioner. It is further submitted that in pursuance to the orders of this Court, dated 15.04.2011, the petitioner/defendant deposited 50% of the decretal amount to the credit of the suit, and hence the delay may be condoned.

4. Heard the learned counsel appearing for both the parties and considered the material on record.

5. In view of the circumstances stated in the affidavit filed to condone the delay, I feel that the delay can be condoned for the satisfactory reasons mentioned therein and in view of depositing half of the decretal amount to the credit of the suit, subject to certain conditions.

6. In the result the Civil Revision Petition is allowed, and the order dated 01.03.011 is set aside, subject to the condition that the petitioner/defendant pays costs of Rs.2,000/- to the counsel appearing for the respondent/plaintiff in the present revision, within a period of two weeks from today. On compliance with the said condition, the I.A. shall stand allowed, and the learned Appellate Court should register the appeal. Consequently, the pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M.S.K. JAISWAL, J

Date: 21.06.2017

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