

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CIVIL REVISION PETITION No.6051 of 2016

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C') is filed aggrieved by the order, dated 14.10.2016, in I.A.No.146 of 2016 in O.S.No.01 of 2015 on the file of Principal Senior Civil Judge, Kakinada.

2. Heard and perused the material available on record.

3. The petitioner herein/defendant filed the aforesaid application under Section 5 of the Limitation Act, 1961 to condone the delay of 285 days in filing the application under Order IX Rule 13 C.P.C to set aside the *ex parte* decree, was dismissed.

4. The suit is filed for recovery of money basing on promissory note. Summons were served personally on the petitioner/defendant, but on the date of hearing as he did not attend the Court due to ill-health and there was no representation on his behalf, the court below set him *ex parte* and thereafter, *ex parte* decree was passed on 27.02.2015. To set aside the *ex parte* decree, he filed a petition with a delay of 285 days. But, the said application was dismissed on the ground that the petitioner has not explained the delay properly. Challenging the same, the present revision case is filed.

5. In affidavit filed in support of the application, it is stated that though the petitioner received summons, due to ill-health he could not attend the Court and to engage any Advocate; and that thereafter, the Court below passed *ex parte* decree 27.02.2015;

that on coming to know about passing of *ex parte* decree, he engaged a counsel and advised him to file a petition to set aside the *ex parte* decree and also advised to file a petition to stay all proceedings in the suit and file a petition to send Ex.A.1-promissory note to handwriting expert for comparison of the signatures on the promissory note with that of the admitted signatures that would be taken in the open Court. It is stated that in the said process, the delay of 285 days has occurred. He further stated that the delay is not wilful or wanton.

6. Learned counsel for the petitioner would submit that the petitioner is a retired employee and he is suffering from ill-health and hence, prays to set aside the order.

7. Considering the facts and circumstances of the case, grievance of the petitioner and the reasons assigned by the petitioner for the delay, this Court is of the view that the delay can be condoned.

8. Accordingly, the Civil Revision Petition is allowed setting aside the order, dated 14.10.2016, in I.A.No.146 of 2016 in O.S.No.01 of 2015 on the file of Principal Senior Civil Judge, Kakinada. The trial Court is directed to condone the delay and order restoration application subject to condition of petitioner paying an amount of Rs.5,000/- (Rupees Five thousand only) to the respondent/plaintiff on or before 15.03.2017. Further, the trial Court is directed to dispose of the suit as expeditiously as possible preferably, within a period of six months (06) months from the date of receipt of a copy of this order.

Miscellaneous Petitions pending, if any, in this Civil Revision
Petition shall stand closed. There shall be no order as to costs.

JUSTICE RAJA ELANGO

FEBRUARY 01, 2017
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Date: 01.02.2017

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