

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.4502 OF 2017

ORDER:

This civil revision petition is filed under Section 115 of C.P.C, challenging the docket order in I.A.No.230 of 2017 in O.P.No.216 of 2015 dated 13.07.2017 passed by the III Additional District and Sessions Judge, Asifabad, Adilabad District.

I.A.No.230 of 2017 was filed under Section 5 of Limitation Act, to condone the delay of 94 days was dismissed by the Court below. Further, the respondents 1 & 2 herein filed O.P.No.216 of 2015 under Section 166(1)(C) of Motor Vehicles Act, 1988, claiming compensation of Rs.10,00,000/- for the untimely death of one Md.Raj Mohammed in a road accident that occurred on 21.12.2012.

Further, on establishment of new Additional District Judge's Court at Asifabad, O.P.No.104 of 2014 was transferred from Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge at Adilabad to the III Additional District Court, Asifabad and the case was renumbered as O.P.No.216 of 2015. It is stated that no notice was served on the petitioner intimating about the transfer of O.P.No.216 of 2016 from the Court at Adilabad to the Court at Asaifabad, either by District Court at Adilabad or by the

III Additional District and Sessions Judge, Asifabad and set the petitioner *exparte*.

As the petitioner did not receive any notice either before transferring the petition or after transfer from the Court at Adilabad to Asifabad, the petitioner has no knowledge about transfer and pendency of the matter at Asifabad and thereby, there is delay of 94 days in filing the petition under Order IX Rule 13 C.P.C to set-aside the *exparte* decree passed against this petitioner and the petitioner sought to condone the delay. But, the Court upon hearing, dismissed I.A.No.230 of 2017 with a single sentence order which reads as follows:

“As there is no justifiable ground to condone delay. Hence petition is dismissed.”

The order is challenged on various grounds, mainly on the ground of failure to issue notice before transfer of the case by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge at Adilabad to III Additional District and Sessions Judge, Asifabad, thereby, the petitioner has no information about the transfer and pendency of O.P.No.216 of 2015. In such case, the cause shown by the petitioner is justifiable cause to condone the delay and prayed to set-aside the order.

During hearing, learned counsel for the petitioner reiterated the grounds urged in the affidavit, whereas, learned counsel for the

respondent opposed the petition while supporting the order passed by the Court below in all respects.

It is an undisputed fact that O.P.No.104 of 2014 was pending before Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge at Adilabad. Later when III Additional District and Sessions Court at Asifabad was established, the Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge at Adilabad transferred O.P.No.104 of 2014 to III Additional District and Sessions Court at Asifabad without issuing notice to the petitioner and renumbered O.P.No.04 of 2014 as O.P.No.216 of 2015, as the accident occurred within the territorial jurisdictional limits of III Additional District and Sessions Court at Asifabad.

Section 24 of C.P.C. conferred discretionary jurisdiction on the Court to withdraw and transfer the cases pending on the file of one Court subordinate to High Court under its control and such jurisdiction has to be exercised with care and caution keeping in view the inconvenience being caused to the parties.

Section 24 of CPC extends the option of getting the forum changed to either party to a suit or proceeding and gives them the option to move an application for transfer of suit to another Court. This section also empowers the High Court to *suo moto* (on its own motion) withdraw any case from a subordinate Court and adjudicate on it or transfer it to another Court. The Court exercises its powers under this section keeping in mind the interest of

justice and convenience of the parties. It is to be ensured that unnecessary inconvenience is not caused to any party as held in “K.Meenambigai v. Poovanandan (MANU/TN/1193/2008)”

When a petition is pending and the same is transferred by exercising suo moto power without notice to the Court, the III Additional District and Sessions Court at Asifabad ought to have issued notice to the petitioner, informing him about the transfer of the case date of adjournment. But, no such procedure is followed by the III Additional District and Sessions Court at Asifabad, thereby, the petitioner was set exparte. In such case, the cause shown by the petitioner can be said to be a sufficient cause, since it is beyond the control of the petitioner i.e. due to lack of knowledge about transfer of petition pending before Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge at Adilabad and transferring the same to III Additional District and Sessions Court at Asifabad. But, the III Additional District and Sessions Court at Asifabad passed a cryptic order in single sentence without assigning any reason. Hence, the cryptic order is liable to be set-aside, while holding that the cause shown by the petitioner is a sufficient cause, which prevented him from appearing before the Court below on the date of adjournment. Therefore, the delay in filing the petition is condoned.

In the result, the civil revision petition is allowed, by setting-aside the docket order in I.A.No.230 of 2017 in O.P.No.216 of 2015

dated 13.07.2017 passed by the III Additional District and Sessions Judge, Asifabad, Adilabad District. Further, III Additional District and Sessions Judge, Asifabad, Adilabad District is directed to dispose of petition in accordance with law, preferably with an period of three months from the date of receipt of copy of this order.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

Date:02.02.2018

SP

JUSTICE M. SATYANARAYANA MURTHY

