

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.356 of 2018

ORDER:

Notices were served on respondents 1 to 4 and 6 to 8. Proof of service also filed in the Court on 07.03.2018. So far as respondent No.5 is concerned, a memo is filed by the petitioners stating that she died while the suit is pending, on 15.10.2012. On instructions, learned counsel for the petitioners submitted that, to the knowledge of the petitioners, there are no legal representatives / heirs to the 5th respondent. In those circumstances, it can be said that the effective service is made in the Civil Revision Petition.

2) The Civil Revision Petition is filed against the dismissal of I.A. No.673 of 2017 in A.S.No. ____ of 2017, on the file of the learned VI Additional District Judge, in the Court of Gooty, seeking to condone the delay of 53 days in preferring the appeal against the judgment and decree, dated 21.06.2017, passed by the learned Junior Civil Judge, Gooty, in O.S.No.272 of 2007.

3) In the affidavit filed in support of I.A.No.673 of 20017, the 1st petitioner stated that he was attending to the suit proceedings and petitioners 3 to 5 are women and they practically do not have any knowledge about the suit proceedings and they were not also conversant with the legal proceedings. It is on account of the deponent suffering from weakness and after recovering from the fever, he could not meet his advocate and give instructions. In that process, there occurred a delay of 53 days in preferring the appeal.

4) Though a counter affidavit is filed in the said I.A. by the respondents, what has been stated therein is that suffering ill-health cannot be a ground and, at any rate, it is asserted that the petitioners failed to explain the delay of each and every day. Learned Appellate

Judge had accepted the version of the respondent and passed the impugned order dismissing the said I.A.

5) It is unnecessary for this Court to refer to a large number of cases, wherein the Supreme Court had categorically held that the appeal is a statutory and vested right and the courts ought to be liberal in condoning the delay, as it is not possible for an individual to explain each and every minute delay and ultimately, the delay in each case should be condoned on the facts of that particular case. Viewed from that angle, in the present case on hand, there is no dispute that the deponent of the affidavit before the Court below, who is the 1st plaintiff, is aged about 72 years as on the date of filing of the I.A. and he was also a retired employee and the other plaintiffs were all women and that they would not have any knowledge about the legal proceedings. Though there is a denial with respect to the ill-health of the 1st petitioner, this Court feels, it is not an uncommon for a 72 years-old person from suffering ill-health or inconvenience and for further the delay is not inordinate. It is a fit case to condone the delay and the Court below ought to have exercised the discretion to condone the delay.

6) In that view of the matter, the Civil Revision Petition is allowed and the delay is condoned. No costs.

7) Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

CHALLA KODANDA RAM, J.

Date: 15.06.2018.

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C.R.P. No.356 of 2018

Date:15.06.2018

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