

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION Nos.312 & 342 OF 2015

COMMON ORDER:

These two revision petitions are filed questioning the orders dated 23.06.2014 passed in I.A.Nos.401 of 2012 and 402 of 2012 by the learned Senior Civil Judge, Sompeta, Srikakulam District.

2. I.A.No.401 of 2012 is filed to condone the delay of 3468 days in filing the L.R. application and I.A.No.402 of 2012 is the L.R. application. As the Court below felt that the delay was not satisfactorily explained, I.A.No.401 of 2012 was dismissed and consequently, I.A.No.402 of 2012 was also dismissed. Questioning the same, the present Civil Revision Petition is filed.

3. Heard Sri K.Manik Prabhu, learned counsel for the petitioners and the learned Government Pleader for Arbitration appearing for respondent Nos.1 to 3.

4. Learned counsel for the petitioners submits that the lower Court took a hyper technical view of the matter. It is his contention that the delay is not 3468 days as mentioned in the application. He points out that the 2nd plaintiff died on 28.08.2008 and this application is filed in September, 2012. Hence, there is a delay of 1389 days. Apart from that, he contends that the petitioners are villagers, who are not well versed with legal proceedings and hence, a liberal view has to be taken and allow the petitions on merits. He relied on a decision reported in ***Banwari Lal (D) by LRs. and another v. Balbir Singh***¹ and

¹ AIR 2015 SC 3573

argued that rules of procedure should be liberally construed and that the party should be given an opportunity to contest the matter on merits.

5. In reply thereto, the learned Government Pleader for Arbitration would submit that the delay is abnormal and absolutely, no clear or cogent reasons are given for condonation of delay and that unless and until, the delay is satisfactorily explained, the petitions cannot be allowed.

6. This Court, however, notices the averment that the 2nd plaintiff died on 28.08.2008 and that he came to know very recently about the pendency of the suit. No other explanation is given or forthwith and no clear data is given as to how and when he actually came to know about the pendency of the suit. Admittedly, the LRs of family members of the deceased-2nd plaintiff are also residents of Kasibugga Town. In the affidavit, the delay is mentioned as 3468 days, whereas the learned counsel states that the delay is actually 1389 days. This shows that the affidavit was drafted in a very casual manner.

7. The Hon'ble Supreme Court of India in the case of ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others***² has summarized the points to be considered by a Court in dealing with the applications filed for condonation of delay. The Hon'ble Supreme Court clearly stated that the affidavit should be drafted with care and caution and the Court also should see that the condonation of delay should not be dealt with in a routine manner.

² (2013)12 SCC 649

8. This Court, after hearing the learned counsel, perused the judgment relied upon by the learned counsel for the petitioners in **Banwari Lal's** case (1 supra) and notices that the said judgment deals with the impleadment of legal representatives. The decision of the Hon'ble Supreme Court in **Esha Bhattacharjee's** case is directly on the point. The affidavit in this case states that the delay is 3468 days, whereas the learned counsel submits that the delay is only 1389 days. Therefore, it is clear that the affidavit is not drafted with care and caution that is required. The explanation is also very facile and there are absolutely no details furnished. In the case on hand, the reasons are not sufficiently explained. This Court is of the opinion that the lower Court did not commit any error in passing the impugned order.

9. Hence, the Civil Revision Petitions are dismissed.

Miscellaneous Petitions, if any, pending shall stand closed.

No costs.

Date : 11.12.2018
ssp

D.V.S.S.SOMAYAJULU, J