

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

C.R.P.NO.24 OF 2014

ORDER:-

This revision petition is filed questioning the order, dated 04-10-2013 in I.A.No.1386 of 2011 in O.S.No.215 of 2005 on the file of the court of Senior Civil Judge, Khammam.

2. The suit O.S.No.215 of 2005 is filed for recovery of money. The defendants remained *ex parte*. The plaintiff also did not actively pursue the matter and on 08-03-2006 the suit was dismissed for default as the plaintiff did not appear. Thereafter, it is stated that on 08-04-2008 the original plaintiff died. After coming to know about the pendency of the suit in July 2011, the present application I.A.No.1386 of 2011 is filed for condonation of delay along with another application for restoration of the suit.

3. The respondents filed their counter denying the case set up and pleaded that the entire cause that is mentioned in the application is false. The lower court after hearing both the learned counsel dismissed the application. Questioning the same, the present revision petition is filed.

4. This Court has heard Sri Kowturu Vinayua Kumar, learned counsel for the petitioners and Sri D.Sudershan Reddy, learned counsel for the respondents.

5. On a perusal of the affidavit, it is clear that the suit itself was dismissed for non-prosecution on 08-03-2006. The affidavit is filed by a legal representative. In the affidavit filed in support of the application, it is mentioned that the petitioners' father was suffering from ill-health and was bedridden and that thereafter

he could not file the application in time and that he died on 08-04-2008.

5. Thereafter, from 08-04-2008 till filing of this application, the averments in the affidavit are that the deponent was unaware of the filing of the suit or of the dismissal of the suit. Therefore, according to the applicants, a cumulative delay of 1919 days occurred. The learned counsel for the petitioners argued that as the defendants did not contest the suit and they were set *ex parte*, no prejudice would be caused to them if the application is allowed.

6. In reply thereto, the learned counsel for the respondents points out that the proposed 2nd plaintiff who is the legal representative of the deceased plaintiff is an Advocate by profession. In addition, the learned counsel also points out that absolutely no proof is filed for the delay from 08-04-2008 till the date of filing of the application and no proper explanation is offered. Therefore, the learned counsel submits that no grounds are made out to condone the delay.

7. This court, after hearing both the learned counsel, notices that it is a fact that the proposed 2nd plaintiff who is the son of the deceased plaintiff is a practicing Advocate. In addition, despite the strong objection raised by the respondents, no evidence is filed to show that the deceased-plaintiff was in fact sick for a period of two years. It is noticed that all the parties are resident of Khammam town. Therefore, if at all the deceased-plaintiff was actually sick for this long period of two years, there would be some evidence to show that he was in fact sick. Apart

from this, from the period 08-04-2008 till the date of filing the application also, no satisfactory explanation is actually given as pointed by the learned counsel for the respondents. Even after the death of the plaintiff, the affidavit is absolutely silent and does not have any details what-so-ever as to how the petitioners came to know of the dismissal of the suit after the death of their father in April 2008. Therefore, in view of all of the above, this court is of the opinion that absolutely no grounds are made out for condonation of delay. This court finds that there is absolutely no error committed by the court below in dismissing the application.

Hence, the Civil Revision Petition is dismissed. No costs. The interlocutory applications pending, if any, shall stand closed in consequence.

04-12-2018
TSNR

D.V.S.S.SOMAYAJULU,J

