

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition No.732 of 2018

ORDER:

The petitioner was the appellant in the unnumbered Civil Appeal vide ASCF No.6761 of 2017 which was filed with delay. An application I.A.No.905 of 2017 was filed under Section 5 of the Indian Limitation Act in seeking to condone the delay of 455 days in filing the appeal. The respondents 1 and 2 are the defendants in O.S.No.322 of 2009 which was the suit for declaration of title and recovery of possession filed by the plaintiff/ appellant/ revision petitioner against the respondents and the suit was dismissed after full-dressed trial by decree and judgment dt.01.04.2016 against which the appellant/plaintiff/ revision petitioner filed a review application vide I.A.No.450 of 2016 and the same ultimately dismissed on contest on 20.04.2017. No doubt the review is not an appeal in disguise.

It is subsequently he filed present appeal before the Prl.District Judge, Nellore against the decree and judgment of the I Addl.Sessions Judge, Nellore in the suit supra. It is therefrom the delay occurred which is neither intentional nor wanton but for pendency of the review application. The respondents by filing counter opposed the delay condonation application saying as it is an abuse of process of law and there is no cause of action for the delay of nearly 1½ years. The learned Judge by the impugned order dt.30.12.2017 in I.A.No.905 of 2017 in the unnumbered appeal observed that the very affidavit petition of the petitioner/ appellant/ revision petitioner for the delay speaks because of the pendency of review application, no appeal was filed and after dismissal of the review application on 20.04.2017, the matter was entrusted to Advocate at Hyderabad who after verification advised to file

regular appeal. Thereby filed the regular appeal from that advise instead of filing any revision or appeal against that review dismissal order. It was observed that after dismissal of the review petitioner on 20.04.2017, thereafter also 70 days delay that is not explained properly and not even name of the advocate at Hyderabad whom she approached and advised to file appeal for the 70 days is not mentioned and not believed the version of the plaintiff/ appellant/ review petitioner.

The contentions in the grounds of revision impugning the same are the dismissal order of the learned appellate Court Judge in condonation application is unsustainable, baseless, non-pragmatic and non-realistic. Thereby liable to be set aside.

Respondents even served failed to attend. Heard the learned counsel for the revision petitioner and taken as heard to decide on merits the respondents and perused the material on record.

It is the realistic fact that no person will deliberately kept quiet knowingly without filing an appeal or petition and exhaust the period of limitation but for one or other cause behind it. As otherwise from timely non-filing, there is loss of the statutory right to be vindicated within the prescribed period of limitation. It is thereby the approach required is pragmatic with all elasticity to the necessity depending upon the facts for appreciation as to whether there is just and sufficient cause to condone the delay or not. If the cause is one and the same, there is no necessity of explaining day-to-day delay. So far as filing of the review and its pendency when borne by record not in dispute from date of trial Court judgment till dismissal of the review application by order of the learned trial Judge, dt. 20.04.2017, the only thing to consider is thereafter till filing of the unnumbered appeal, 70 days lapse and that is explained or not in

considering with pragmatic approach. In fact what is stated is once approached the advocate at Hyderabad to file a revision or appeal against the review dismissal order, the advocate having taken time and gone through ultimately advised her for filing of regular appeal against the trial Court's decree and judgment with delay condonation by explaining the period taken for review etc., and once that is borne by affidavit averments in subsistence and it is within the pragmatic approach to consider at best by imposing heavy costs.

Having regard to the above the dismissal order of the lower appellate Court of the delay condonation application impugned herein is unsustainable.

Accordingly and in the result, the revision is allowed by setting aside the dismissal order of the lower Court of I.A.No.905 of 2017, dt.30.12.2017 and by allowing the same subject to costs of Rs.4,000/- (Rupees four thousand only) payable by the petitioner/ appellant to the respondents within one month from today and if they fail to receive to deposit before the lower appellate Court for the lower appellate Court to send the same to the Army Welfare Fund if not chosen to receive by the respondents. Any non-compliance results automatic dismissal of this revision without any further reference.

Consequently, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

Date: 11.07.2018
Vvr

Dr. B. SIVA SANKARA RAO, J