

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

CIVIL REVISION PETITION No.1247 of 2014

ORDER:

This civil revision petition is filed questioning the order, dated 31.12.2013, passed in I.A.No.423 of 2013 in Un-Numbered A.S(SR) No.1136 of 2013, by the Principal District Judge, Khammam.

The appeal is filed questioning the judgment and decree, dated 25.09.2008, passed in O.S.No.4 of 2002, by the Senior Civil Judge, Khammam, which is a suit for recovery of money. The suit was dismissed with costs. The appeal is filed along with an application for condonation of delay of 1549 days. After hearing both the learned counsel, the lower court condoned the delay. Questioning the same, the present revision petition is filed.

This court has heard Sri Krishna Kishore Kovvuri and Sri Challa Srinivasa Reddy, learned counsel for the petitioner and the learned counsel for the respondent respectively.

The contention of the learned counsel for the petitioner is that the delay was condoned by the court below in a mechanical manner without considering the contentions of the present petitioner. The explanation offered by the appellant for condonation of delay is not at all satisfactory. According to the learned counsel, absolutely no proof is filed for any of the averments of the affidavit filed in support of the petition to condone the delay. He points out that as per the affidavit filed in I.A.No.423 of 2013 itself, the appellant clearly averred that in the first week of May, 2009 he is aware of passing of the judgment, but the application for condonation

of delay is filed in March, 2013. The delay is inordinate delay and the same ought not have been condoned, as per the learned counsel.

In reply, the learned counsel for the respondent supports the order that is passed and states that the petitioner was not aware of the actual passing of the decree and that the contents of the affidavit make out a sufficient cause for condonation of delay. According to him, the petitioner was also not well, he is suffering from ill-health and bedridden. Therefore, for all the cumulative reasons, the delay occurred.

This court, after hearing both the learned counsel, notices that in the affidavit that is filed in support of the application for condonation of delay itself, it is clearly mentioned in paragraph No.5 that in the first week of May, 2009 itself when he approached his counsel, he came to know of passing of the impugned decree. Therefore, this court finds sufficient strength in the arguments of the learned counsel for the revision petitioner that the cause of delay has not properly been reckoned and explained. In addition, it is clear that none of the averments of the affidavit are supported by any documentary evidence whatsoever, particularly, when the petitioner has clearly raised a plea that the appellant did not prove the actual period of sickness or file any proof to that effect.

In *Esha Bhattacharjee v. Raghunathpur Nafar Academy*¹ the Hon'ble Supreme Court has culled out the principles of law to be considered in the matter of condonation. The Apex Court has clearly held that there is no precise formula for condonation of delay. At the same time, the Apex Court also held that while dealing with the condonation applications, the courts should see the conduct, behavior and attitude of a

¹ (2013) 12 SCC 649

party relating to its inaction or negligence in approaching the court. If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

This court, after examination of the affidavit on record and the causes mentioned, is of the opinion that no sufficient cause is made out to condone the delay. The order that is passed is contrary to the settled principles of law. Therefore, the same is liable to be set aside and accordingly set aside.

The civil revision petition is accordingly allowed. In the circumstances, there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 13.11.2018
Dsr

D.V.S.S.SOMAYAJULU,J

