

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.1485 and 2391 of 2018

COMMON ORDER:

These revisions are filed by the petitioners/ claim petitioners, aggrieved by the respective orders in I.A.No.617 of 2017 in A.S.No.Nil of 2017 and I.A.No.616 of 2017 in A.S.No.Nil of 2017, dated 01.02.2018, passed by the Principal District Judge, Nellore, SPSR Nellore District.

2. Heard both sides and perused the impugned orders.

3. I.A.No.617 of 2017 was filed by the claim petitioner by name, Unnam Srirama Murthy against Chintham Venkata Subbareddy @ Chinthamreddy Venkata Subbareddy(degree holder), Kanagala Subba Rao (judgment debtor) and Thagirasapu Suresh (auction purchaser). I.A.No.616 of 2017 was filed by the claim petitioner by name M.Radha Krishna Kumari against Chintham Venkata Subbareddy @ Chinthamreddy Venkata Subbareddy(degree holder) and Kanagala Subba Rao (judgment debtor).

4. The above said applications are filed to condone the delay of 85 days in each of the two applications in filing the un-numbered appeals. The appeals are maintained against the dismissal of the claim petitions by the respective orders

dated 23.02.2017 in E.A.No.115 of 2007 in E.P.No.25 of 2003 in O.S.No.6 of 2003 on the file of the Senior Civil Judge, Kavali, by one Unnam Srirama Murthy and another claim petition in E.A.No.117 of 2007 in the said E.P. covered by the said suit before the same Court, by order dated 23.02.2017 in the claim petition maintained by one M.Radha Krishna Kumari.

5. So far as filing of the appeal against the claim petition in respect of delay concerned, the respective affidavits of the two deponents viz., Unnam Srirama Murthy concerned, it is mentioned that he went to Hyderabad and held up there on some private works and he, later, when returned to Kavali, came to know of the disposal of the claim petition and there is lack of information about the dismissal in between and thereby, on knowing about passing of the dismissal order in the claim petition, he rushed to cause file the appeal with the delay occurred in seeking to condone which is neither willful nor deliberate but for the reason supra.

6. So far as M.Radha Krishna Kumari, in her delay condonation affidavit of 85 days is concerned, what she stated is, she suffered from ill-health and underwent treatment covered by the medical record and in that period

of time, she could not contact advocate in cause filing the appeal, thereby, the delay caused, which is neither deliberate nor willful but for the reason supra.

7. In both the petitions, what was the observations of the learned District Judge in dismissal of the delay condonation applications are the reasons for the delay as contended by the respondents are invented respectively and not a just cause to condone.

8. In fact, it is the fundamental thing to be kept in mind that no person willfully avail the time to lapse, but for, one or other reason from which the pragmatic approach for the Court required is to consider as to there is just cause to condone the delay. Here, there are reasons, which are common for the entire period of 85 days in each of the two petitions respectively and there is nothing to falsify the same. Once such is the case, when it is, within the reasonable cause, instead of dismissal, the lower Court could have been allowed the applications by imposing costs within the pragmatic approach.

9. Having regard to the above, the Civil Revision Petitions are allowed by setting aside the dismissal orders in I.A.No.617 of 2017 in A.S.No.Nil of 2017 and I.A.No.616 of 2017 in A.S.No.Nil of 2017, dated 01.02.2018, passed by the

Principal District Judge, Nellore, SPSR Nellore District, subject to payment of costs of Rs.1,000/- in each of the applications before the lower Court within 15 days from the date of receipt of copy of this order, by submission of the copy of the order for the lower Court to condone the delay and to number the appeals if otherwise in order.

10. Consequently, miscellaneous petitions, if any shall stand closed. No order as to costs.

Date:28.09.2018
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JUSTICE Dr. B.SIVA SANKARA RAO

