

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

CIVIL REVISION PETITION NO.2770 OF 2017

**ORDER:**

This is a revision filed against the orders dated 21.02.2017 in IA.No.1106 of 2015 in AS.No. Nil of 2016 on the file of the II Additional District Judge at Vijayawada.

The impugned order was passed in an application filed to condone the delay of 285 days in preferring the appeal. As the said application was dismissed, the present revision has been filed.

I have heard Sri K.L.N.Swamy, learned counsel for the revision petitioners. None appears for the respondents.

Point for consideration is whether the impugned order is valid or not.

A copy of the affidavit filed in the lower Court is also a part of the material papers. A perusal of the affidavit reveals that the applicant has set out the following grounds for condonation of the delay. (a) That his father, who was a party to the proceeding, has fallen sick and gone to Kerala where he died; (b) Because of the illness of the mother, he has to go to his native place regularly; (c) That, after his evidence was given in the case, the matter was posted for defendant's evidence; (d) There was an advocate strike due to bifurcation of the State; (e) That he relied on his advocate-clerk who promised to inform him of the posting of the suit. Ultimately, he states that the advocate-clerk informed him that the suit was dismissed on 20.06.2014 and that he applied for a certified copy of the judgment and decree and he filed the appeal. In the process, 285 days delay has occurred. The respondents

have filed a very long and detailed counter in the lower Court opposing the said application.

The lower Court, after considering the material, came to a conclusion that the application deserves to be dismissed. However, it is clear from a reading of the impugned order that the lower Court did not really appreciate what was totally stated in the affidavit. Even in the case law cited in the lower Court in **G.Ramagowda v. Special Land Acquisition Officer**<sup>1</sup>, the Apex Court held as under.

“Generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bonafides is imputable to the party seeking condonation of delay.”

Recently, his Lordships of the Hon'ble Supreme Court of India also held in a case reported in **Perumon Bhagvathy Devaswon v. Bhargavi Amma**<sup>2</sup> that where there are no allegations of malafides, lack of bonafides etc. and particularly in matters where a party need not do anything, the Court should take a lenient view. In addition the first appeal is a right which cannot be taken away on technical grounds.

Hence, after a review of the entire material on record; the case law on the subject and after hearing the learned counsel for the petitioners, this Court is of the opinion that the impugned order is not correct nor is it as per law. This Court, therefore, allows the revision petition and condones the delay of 285 days in preferring the appeal and the order dated 21.02.2017 is hereby set aside. The lower Court is directed to number the appeal and take

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<sup>1</sup> (1988)2 SCC 142

<sup>2</sup> (2008)8 SCC 321

the same on record, if it is otherwise in order. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

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**(D.V.S.S.SOMAYAJULU, J)**

3<sup>rd</sup> January 2018  
RRB

