

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.3654 of 2018

ORDER:

The revision petitioner is the petitioner/appellant in CMA.No.57 of 2010 on the file of learned Principal District Judge, Nellore. The said appeal was filed under A.P. Estates Abolition Act, 1948 against the order dated 06.02.2010 in R.Dis.E13/2511/2009 passed by the Joint Collector-cum-Settlement Officer, Nellore.

The appeal was dismissed for default on 04.09.2012. To set aside the same, an application in IA.No.1140 of 2012 under Order IX Rule 9 CPC maintained by the petitioner/appellant before the learned District Judge, that application again ended in dismissal for default on 25.04.2014 and to set aside that dismissal order, the appellant/petitioner filed unnumbered petition in CF.No.3262 of 2014, which is an application to restore the dismissal order in IA.No.1140 of 2012 there was return with office on 01.07.2014 and to represent the same there is delay of 652 days in I.A.No.378 of 2016 covered by the impugned order dated 30.11.2017 of the learned District Judge is dismissal of that said representation delay of 652 days.

Though the facts are hard and lack of diligence on the part of the appellant all through right from the filing of appeal in 2010 and its dismissal in 2012 even filed application to restore by its non-prosecution that was ended in dismissal

and to restore even the unnumbered petition file returned failed to represent for nearly 2 years, the only thing before the lower Court to consider in the factual scenario was not the earlier non-diligence but cause for the delay in representation of the returned petition of 652 days that too when the affidavit speaks the return petition was misplaced in their advocate office with other bundles. No doubt there is no affidavit of the advocate clerk or any of the advocates of the office in proof of the fact. However, once the advocate signed the petition in support of the affidavit in filing that can be oath safe as the same is principle in cause filing through the party and such misplace or mixing with other bundles since natural thing, same can be allowed subject to costs.

Having regard to the above and in the result, this Civil Revision Petition is allowed by condoning the delay subject to costs of Rs.5,000/- payable to the Army Welfare Fund to pay within one week from the date of receipt of the order and file proof before the lower Court, failing which the lower Court's dismissal order holds good.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 03.08.2018
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