

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

CIVIL REVISION PETITION No.3623 of 2018

ORDER:

This Civil Revision Petition is filed questioning the orders dated 21.11.2017 passed by the II Additional District Judge, Parvathipuram in I.A.No.942 of 2015 in unnumbered A.S of 2015. This appeal is filed along with the application under Section 5 of the Limitation Act which was numbered as I.A.No.942 of 2015 to condone the delay of 227 days in filing the appeal. The trial Court ordered notice to the first respondent and the first respondent filed a counter affidavit. After hearing both the parties, the impugned order dated 21.11.2017 was passed dismissing the delay petition. Questioning the same, the Civil Revision Petition is filed along with I.A.No.1 of 2018 for condoning the delay of 126 days in filing the Civil Revision Petition. In the delay condonation petition, this Court by its order dated 5.9.2018 came to the conclusion that as the notices sent to the respondents were returned with an endorsement "addressee left" and as notices were sent to the very same address that is mentioned in the lower Court; there is deemed service.

The Civil Revision Petition itself was then taken up for hearing.

The learned counsel for the petitioner submits that the Court below did not go into the actual reasons mentioned in I.A.No. 942 of 2015 for condoning the delay.

The learned counsel for the petitioner points out that the certified copy had to be sent to the Head Office from the Parvathipuram branch. The Head Office, after consultation with

their legal counsel took permission to file an appeal. In addition the delay occurred, as the same was sent to the Finance Department and also for preparing the G.P.A. As a result of all these cumulative factors; the delay of 226 days occurred. The learned counsel for the petitioner points out that the lower Court did not consider these aspects in proper perspective. The learned counsel for the petitioner points out that the main branch is at Pune and the Branch at Parvathipuram had to send the papers and the same had to be approved by the legal counsel and other officials of the Company and then decision has to be taken for preparing the G.P.A., and to sanction the expenses etc. Therefore, due to these administrative reasons only, the delay has occurred.

This Court, after hearing the learned counsel for the petitioner, is also of the opinion that a pragmatic but liberal approach must be taken in dealing with this petition for delay condonation. The First Appeal is a valuable right that is available to the party and the same cannot be shut out except when there is gross negligence in pursuing the case. In the opinion of this Court, there is neither gross negligence nor any willful default. Administrative delays do occur and Courts have noticed the same in reported cases also. This Court after hearing the learned counsel is of the opinion that there is no "gross negligence" warranting dismissal.

In the circumstances, this Court is of the opinion that sufficient cause is made out to condone the delay. Therefore, the delay of 227 days in filing the appeal is condoned. The impugned order, dated 21.11.2017 is set aside. The II Additional District Judge, Parvathipuram is directed to take the appeal on file, if the same is otherwise in order.

Accordingly, Civil Revision Petition is allowed. I.A. No.2 is closed. No costs.

Miscellaneous petitions, pending if any, shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date:07/09/2018
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