

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.3646 of 2018

ORDER:

This Civil Revision Petition arises out of an order of the First Appellate Court refusing to condone the delay of 192 days in filing an appeal against an order in a claim petition.

2. Heard Mr. Venkateswara Rao Vallabha, learned counsel for the revision petitioner and Mr. M.V. Venu, learned counsel for the respondents 1 to 3.

3. The petitioner herein is a decree holder in O.S.No.117 of 1996. At the stage of execution, the respondents 1 to 3 herein filed a claim petition in E.A.No.124 of 2005 under Order XXI Rule 58 of the Code of Civil Procedure for raising the order of attachment to the extent of 10/12 share in the petition schedule property. The claim petition was allowed by an order dated 27-04-2016.

4. As against the order allowing the claim petition, the petitioner filed a Civil Revision Petition on the file of this Court, without realising that only an appeal ought to be filed. After the Civil Revision Petition was returned on the ground of not maintainability, the petitioner went to the First Appellate Court. This resulted in a delay of 192 days. The First Appellate Court refused to condone the delay. Hence, the petitioner is before this Court.

5. The order by which the trial Court rejected the application for condonation of delay, is a cryptic order. The fact remains that the petitioner filed CRP (SR).No.23717 of 2016 as against the order passed in the claim petition. It is only after the revision petition was

returned, the petitioner realised that a regular appeal would lie. These facts have not been appreciated properly by the Court below.

6. The petitioner is after all the decree holder. She may not be interested in protracting the proceedings. In fact, she stands to suffer by virtue of the delay. In such circumstances, the Court below ought not to have adopted a pedantic approach.

In view of the above, the Civil Revision Petition is allowed, the impugned order is set aside and the application in I.A.No.177 of 2017 for condonation of delay on the file of XVI Additional District Judge, Nandigama, is allowed. The First Appellate Court may number the first appeal and take up the same for disposal along with miscellaneous applications, if any.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 17-08-2018

Ksn