

THE HON'BLE SRI JUSTICE N.BALAYOGI

C.R.P. No.1095 of 2016

ORDER:

This revision under Section 115 of C.P.C. is filed seeking to set aside the orders of the Principal Junior Civil Judge, Tirupathi in dismissing I.A.No.1179 of 2015 in C.F.No.12699 of 2015 filed to condone the delay of 777 days in representing the suit.

2. The contention of the plaintiff/petitioner herein is that there is no wilful or deliberate negligence on the part of the petitioner, but for the ill-health she suffered with old age ailments like knee pain, Diabetic and Blood Pressure, she could not represent the plaint within the time. In proof of her illness, though the petitioner filed medical certificate, the trial Court erroneously dismissed the petition without considering the same.

3. Heard the learned counsel for the petitioner and perused the material available on record. Having received the notice, none appears for the respondent.

4. Now, the point that arises for consideration in this revision is:-

“Whether the impugned order of the trial Court dismissing I.A.No.1179 of 2015 in C.F.No.12699 of 2015 suffers with any legal infirmities?”

5. The learned counsel for the petitioner contended that the trial Court without considering the nature of the suit and also the

medical certificate produced by the petitioner, erroneously dismissed the petition.

6. The record goes to suggest that the petitioner filed the suit in C.F.No.12699 of 2015 seeking specific performance of agreement of sale and the same was returned with certain objections. There is a delay of 777 days in representing the plaint.

7. The reasons stated by the petitioner to condone the delay are that she is 60 years old and suffering with old age ailments such as knee pain, diabetic and blood pressure and therefore, she could not represent the suit within the time. In support of her contention, the petitioner filed a medical certificate along with the petition. In the impugned order, the trial Court observed that no medical record or medical prescriptions are filed by the petitioner to show that she was suffering with hypertension, diabetic and knee pain and that she took treatment at Tirupati Diabetic Centre from 29.10.2013 to 14.12.2015.

8. Admittedly, the petitioner is a lady aged about 60 years. It is quite natural at such an old age suffering with knee pains, diabetic and hypertension. To substantiate her case, the petitioner filed the medical certificate showing that she took treatment at Tirupati diabetic Centre from 29.10.2013 to 14.12.2015 for the ailments such as hypertension, diabetic and knee pains. The trial Court without appreciating the said medical certificate in proper manner, dismissed the I.A. on the ground that no medical record or medical prescriptions are filed in proof of her treatment and ailments with which she was suffering. However, it is clear from the medical certificate produced by the petitioner that she was suffering with

hypertension, diabetic and knee pains and that she took treatment at Tirupati Diabetic Centre from 29.10.2013 to 14.12.2015. Such is the case; non-production of medical certificate and medical prescriptions is not fatal. More so, the suit is filed for specific performance of agreement of sale alleged to have been executed by the respondent herein. Furthermore, the delay is not in filing the suit, but the said delay is in representing the plaint after its return by the office of the Court.

9. In view of the facts and circumstances discussed above, I am satisfied with the cause shown by the petitioner that she was suffering with hypertension, diabetic and knee pains, which are quite natural at such an old age and the said fact is also supported by the medical certificate produced by the petitioner. Even if the delay of 777 days in representing the plaint is condoned, no prejudice or loss would be caused to the respondent and ultimately, after numbering the suit, the respondent will have an opportunity of filing the written statement and ultimately, the suit will be decided on merits after affording due opportunity to both the parties to adduce evidence. The finding of the trial Court that the petitioner failed to produce medical record or medical prescriptions in support of her contention is untenable, perverse and liable to be set aside.

10. In the result, the Civil Revision Petition is allowed while setting aside the order dated 05.01.2016 in I.A.No.1179 of 2015 in C.F.No.12699 of 2015 by the Principal Junior Civil Judge, Tirupathi. Consequently, I.A.No.1179 of 2015 shall stand allowed and the trial Court is directed to number the plaint if it is otherwise in order. No costs.

Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

02nd May, 2018

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