

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

CIVIL REVISION PETITION NO.367 OF 2014

ORDER:

This revision is filed questioning the order, dated 10.07.2013 passed in I.A.No.428 of 2018 in O.P.No.706 of 2006 by the Judge, Family Court-cum-V Addl. District and Sessions Judge at Visakhapatnam.

2. I.A.No.428 of 2018 was filed under Section 5 of the Limitation Act, 1963, to condone the delay of 306 days in filing the application to set aside the *ex parte* decree. The trial Court on considering the material available on record, dismissed the application. Hence, this revision.

3. The only ground that is urged and strongly argued by the learned counsel for the petitioner is that the impugned order was passed on 10.07.2013. At that point of time, there was stay of the trial of the O.P.No.706 of 2006 and all other proceedings were directed to go on.

4. It is the submission of the learned counsel for the petitioner that stay was granted in Tr.C.M.P.No.161 of 2007, continued and Transfer C.M.P. came to the allowed on 31.03.2008.

5. Learned counsel for the petitioner further submits that when there was stay of the trial of O.P.No.706 of 2006, the Court could not set the petitioner absent, or post the matter for the evidence of the petitioner and then pass a decree. It is the contention that the trial includes all these steps. Therefore, the counsel submits that the trial Court committed an error in passing the impugned order by overlooking the stay that was granted particularly on the trial of the matter. Counsel for the petitioner submits that Tr.C.M.P.No.161 of 2007 was allowed

on 31.03.2008 and later as the O.P. was dismissed, the order was re-called in the year 2011.

6. Learned counsel for the petitioner further submits that even in the application filed to condone the delay, pendency of Tr.C.M.P.No.161 of 2007 and the stay that has been granted were also mentioned in the affidavit. The reason for the absence is that due to communication gap, the petitioner was not present. The petitioner reiterates that trial was stayed by the orders of this Court on 01.05.2007. Therefore, he states that the lower Court committed error in ignoring the said order.

7. Despite opportunities, counsel for the respondent is not present. On 06.12.2018, 10.12.2018 and on 11.12.2018, the respondent does not present.

8. Counsel for the petitioner urges that maintenance amount is also not paid. Therefore, in view of the fact that the order was passed ignoring the stay granted by this Court, the petitioner prays that may be given an opportunity to agitate his case once again before the trial Court noting his submissions.

9. Accordingly, the Civil Revision Petition is allowed setting aside the impugned order, dated 10.07.2013 passed in I.A.No.428 or 2018 in O.P.No.706 of 2006 by the Judge, Family Court-cum-V Addl. District and Sessions Judge at Visakhapatnam. The matter is remanded to the trial Court with a direction to issue notices to both parties and hear the matter afresh and pass appropriate orders in accordance with law. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

D.V.S.S.SOMAYAJULU, J

DATED:12-12-2018.
Hsd