

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.5270 OF 2018

O R D E R

The petitioner in this civil revision petition, filed under Article 227 of the Constitution, is the plaintiff in O.S.No.184 of 2016 on the file of the learned Principal Junior Civil Judge, Medchal, Ranga Reddy District. The said suit was dismissed for default on 07.12.2016. The petitioner/plaintiff thereupon filed I.A.No.223 of 2017 in the said suit under Section 5 of the Limitation Act, 1963, seeking condonation of the delay of 42 days in filing a restoration application. By order dated 01.08.2018, the trial Court dismissed the I.A. Hence, this revision.

Heard Sri K.Prabhakar Rao, learned counsel for the petitioner/plaintiff. Despite service of notice, the respondent/defendant did not choose to enter appearance before this Court.

Perusal of the order under revision reflects that the trial Court took note of the fact that the petitioner/plaintiff failed to deposit the process fee prior to the dismissal of the suit, despite the matter being adjourned time and again to enable him to do so. In so far as the condone delay application was concerned, the trial Court took note of the fact that there was a delay of 42 days on the part of the petitioner/plaintiff in filing a restoration petition but he did not file any evidence in support of his plea that he could not take steps within time due to the death of his close relative. It is on this ground that the trial Court held against the petitioner/plaintiff on the point of delay.

It may be noted that the petitioner/plaintiff, being a resident of the United States of America, is represented by his GPA Holder, A.Pullaiyah, s/o A.Chandraiah. Sri K.Prabhakar Rao, learned counsel, filed a copy of the

death certificate dated 10.04.2017 issued by the Panchayat Secretary, Magdurupuram Gram Panchayat, Chennaraopet Mandal, Warangal District, evidencing that A.Chokka Rao, s/o A.Chandraiah, had expired on 15.11.2016. It is therefore clear that the brother of the GPA Holder of the petitioner/plaintiff expired. This was the reason cited by him for the delay in the filing of the restoration application. It may also be noted that the delay is not substantial, being a mere 42 days. As the death certificate now produced before this Court clearly manifests that a close relation of the GPA Holder of the petitioner/plaintiff expired, it can be accepted that he could not take steps within time for a valid reason.

It may however be noted that it was for the GPA holder of the petitioner/plaintiff to produce before the trial Court the death certificate that has now been placed before this Court, but no such step was taken. This carelessness on the part of the GPA holder of the petitioner/plaintiff is no doubt to be condemned but that would not be reason enough to non-suit the petitioner/plaintiff. In that view of the matter, this Court is of the opinion that a lenient view requires to be taken and the delay in the filing of the restoration application warrants condonation.

The civil revision petition is accordingly allowed and the order under revision is set aside. I.A.No.223 of 2017 in O.S.No.184 of 2016 on the file of the learned Principal Junior Civil Judge, Medchal, Ranga Reddy District, is ordered. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

21st DECEMBER, 2018

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