

HON'BLE SRI JUSTICE D.V.S.S.SOMAYA,JULU

CIVIL REVISION PETITION No.4736 of 2014

ORDER :

This revision petition is filed questioning the order dated 31st of October 2014, passed in I.A.No.364 of 2013 in an un-numbered Appeal bearing C.F.R.No.12, dated 02.01.2013. The appeal was filed questioning the judgment and decree passed by the lower Court in the suit O.S.No.3 of 2005, which was filed for declaration of title, injunction etc. The suit was dismissed on merits, against which, appeal was filed with a delay of 1313 days. Therefore, an application was moved under Order 41, Rule 3-A of CPC for condonation of such delay. In the application, it is mentioned by the GPA holder of the appellant as follows :

“I am suffering with blood pressure and sugar and I am hospitalized, after that due to ill-health for all these years and for that reasons, I did not come to Court within the limitation period and delay is occurred in filing the appeal which is neither willful nor intentional. There are no willful laches on my part in not filing the appeal in time.

2. To this specific paragraph, a very serious objection was taken in the counter affidavit, stating that the diseases mentioned in the affidavit are not that serious so as to prevent the petitioner/respondent herein, from approaching the Court in time. It is also clearly spelt out in the counter that a Doctor's certificate is also not filed to show that the petitioner/respondent has been

hospitalized for number of years. Despite the opposition in the counter filed, the Court below allowed the application and condoned the delay on payment of costs of Rs.1,400/-. The costs were paid and the appeal was numbered. In the meantime, this CRP was filed and stay was obtained.

3. Heard Sri Venkateswarlu Chakkilam, learned counsel for petitioners and Ms.G.Padmavathi Srinivas, learned counsel for respondent.

4. The learned counsel for petitioners argues that it is not clear from the reading of the affidavit filed by the respondent herein before the Court below as to whether the deponent of the affidavit was sick or the original appellant herself was sick. He submits that the deponent is the registered general power of attorney of his wife Smt.B.Venkata Subbulu. He draws the attention of this Court to paragraph No.2 of the affidavit, which is in first person and states that *"I am suffering with blood pressure and sugar and I am hospitalized"*. Therefore, learned counsel submits that if the GPA holder was sick, nothing prevented his wife Smt.B.Venkata Subbulu from presenting the appeal in time. In the alternative, he also submits that if Smt. B.Venkata Subbulu was sick, nothing prevented the GPA holder from presenting the appeal in time. He also points out that no proof is filed for the alleged hospitalization over a period

of time. It is his contention that equity has no place in cases like this, and on that ground of equity, the delay ought not to have been condoned by the lower Court.

5. In response to that, learned counsel for respondent submits that as the appeal is of the year 2014, the lower Court is ready to dispose of the matter on merits. She also submits that the medical certificate was given to the Counsel in the lower Court, but he did not file the same. Therefore, her contention is that party should not suffer for the inaction of the Counsel. In addition, learned counsel also submits that as valuable rights of parties over immovable property are involved, there should be a complete adjudication of the matter so that a comprehensive judgment can be passed by the lower Court on merits.

6. This Court, after hearing both the learned counsel, notices that the delay was condoned on the ground that valuable rights of parties are involved, and that, as the petitioner was suffering from blood pressure and diabetes, an opportunity should be given to contest the case.

7. This Court is also conscious of the decision of the Hon'ble Supreme Court in the case of *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others*¹, wherein,

¹ 2013 (12) SCC 649

the Hon'ble Supreme Court summarised the entire law on the subject in paragraph No.15 of the said judgment. It was held that "sufficient cause" should be understood in proper spirit, philosophy and purpose, regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation. The Hon'ble Supreme Court drew a distinction between inordinate delay and delay of few days, and also held that if the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation. The Hon'ble Supreme Court clearly held that the entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

8. In the case on hand, before the lower Court itself, a very serious objection was raised about the sufficiency of the cause given for condoning the delay. There is sufficient strength in the submission of the learned counsel for petitioners that in the affidavit itself, it is not clearly mentioned as to whether the original appellant was sick or her GPA holder was sick. In either case, no proof was shown whether one of them or both of them were sick. If the deponent was actually hospitalised for number of years, nothing prevented him from filing proof, particularly, when a very serious

objection was taken before the lower Court with regard to such sickness. Therefore, this Court is of the opinion that exercise of discretion by the Court below in this case, is erroneous.

9. For the aforesaid reasons, this civil revision petition is allowed. The impugned order dated 31st October 2014, passed in I.A.No.364 of 2013, is set aside. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

12th November, 2018

ajr

D.V.S.S.SOMAYAJULU, J

