

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 5781 OF 2018

ORDER:

This Civil Revision Petition is filed questioning the order, dated 07.09.2019, passed by the learned Senior Civil Judge, Nandikotkur, Kurnool District, dismissing I.A.No.315 of 2017 in O.S.No.17 of 2017 filed by the petitioner under Section 5 of the Limitation Act seeking condonation of delay of 138 days in filing the application to set aside the *ex parte* decree, dated 06.07.2017.

The respondent herein filed the suit against the petitioner herein for recovery of a sum of Rs.8,38,388/- based on the promissory note, dated 29.05.2014. The petitioner received summons but he did not file the written statement within the time as provided for under the provisions of the Code of Civil Procedure. In view of the same, the trial Court set the petitioner *ex parte* and passed an *ex parte* decree on 06.07.2017. Thereafter, the respondent filed E.P.No.12 of 2017 seeking execution of the decree. Upon receipt of notice issued therein, the petitioner filed I.A.No.315 of 2017 on 20.12.2017 seeking condonation of delay in filing the application to set aside the *ex parte* decree. The respondent filed a counter-affidavit opposing the same. The Court below, having observed that the petitioner

has not produced any material in support of his contention that he underwent surgery, dismissed the I.A.

Learned counsel for the petitioner submits that the delay in filing the I.A. is only on account of the ill-health of the petitioner and he could not produce the medical certificate or any other material as he was not properly advised by his advocate. He, therefore, prays that the Civil Revision Petition may be allowed by setting aside the order under revision.

Learned counsel for the respondent vehemently opposes the Civil Revision Petition and submits that the I.A. filed by the petitioner lacks *bona fides*. He further submits that if the medical certificate produced by the petitioner is to be taken into consideration, the delay has been explained only for the period from 17.04.2017 to 01.07.2017 with respect to the treatment taken by him. He also submits that even assuming that the petitioner was advised bed rest for six months, the said period would end by October, 2017 and he filed the present I.A. on 20.12.2017. In the circumstances, he prays for dismissal of the Civil Revision Petition.

Having considered the respective submissions and on a perusal of the medical certificate produced by the petitioner, it is clear that he had undergone surgery and the doctor advised him to take bed rest for six months from the date of surgery. In view of the fact that there is no denial with respect to the surgery

undergone by the petitioner and taking into consideration the fact that the petitioner is a senior citizen, a lenient view can be taken in the matter, however, on some terms. Hence, this Court is inclined to allow the I.A. subject to the condition of the petitioner depositing a sum of Rs.2,00,000/-.

At this stage, learned counsel for the petitioner requested that the amount of Rs.2,00,000/- would be onerous to the petitioner and the same may be scaled down.

In view of the facts and circumstances of the case, the Civil Revision Petition is allowed setting aside the impugned order. Consequently, I.A.No.315 of 2017 is allowed subject to the condition of the petitioner paying a sum of Rs.1,00,000/- (Rupees one lakh only) to the credit of the suit and costs of Rs.5,000/- (Rupees five thousand only) to the respondent, within a period of four weeks from the date of receipt of a copy of this Order.

Since the suit is based on the promissory notice, the trial Court shall endeavour to dispose of the same within a period of eight months from today.

Consequently, miscellaneous applications, if any shall stand disposed of. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Dt:02.11.2018

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