

HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No. 5696 of 2017

ORDER:

This civil revision petition is filed challenging the order dated 10.07.2017 passed in I.A.No.2060 of 2016 in unnumbered Original Suit of 2016 (GR No.6325, dated 27.04.2012) by the Principal District Judge, Srikakulam (for short, 'the trial Court'). The petitioner is the plaintiff who has filed the suit for cancellation of sale deeds and recovery of possession. The suit was returned with certain objections by the Court. There was delay in representation of the suit again by the plaintiff. Therefore, he filed a petition under Section 151 of Code of Civil Procedure to condone the delay of 1446 days in representing the suit. The trial Court on consideration of the arguments and material on record, dismissed the petition.

2. The argument advanced before the trial Court appears to be that the counsel could not represent the matter and, therefore, the delay of 1446 days occurred. The said contention was not believed by the trial Court and dismissed the petition holding that there is no sufficient reason to condone the delay.

3. The affidavit filed before the trial Court by the plaintiff reveals that the plaintiff filed the suit against the defendant for

cancellation of sale deed and recovery of possession. The same was returned with objections but it could not be re-presented within the time as the documents which are in the suit could not be obtained from the petitioner. It is further stated that he has shifted his office from Opposite Diamond Park tonear Simma Lives, New Colony, Srikakulam, and while shifting the office the bundle was misplaced and could not be traced and, therefore, the delay has occurred. The reason stated for the delay was not considered by the trial Court.

4. Learned counsel for the respondent submitted that there are no merits for consideration in this petition. He further submits that the bundle is returned with all the documents by the trial Court and later the plaintiff has taken a plea that the bundle is misplaced in the office of his counsel while shifting of office and, therefore, there is no sufficient cause to condone the delay.

5. However, having regard to the facts of the case, since the reason stated by the petitioner is that the bundle is misplaced in the office of the counsel at the time of shifting office, the parties cannot be penalised for the mistake committed by the counsel.

6. Therefore, in view of the facts and circumstances of the case, since the delay has occurred only in re-presentation of the suit after it was returned with certain objections, and in view of the fact that some inconvenience has been caused to the respondent/defendant,

the plaintiff is directed to pay costs of Rs.3,000/- (Rupees Three Thousand Only) payable to the defendants within fifteen days from the date of receipt of a copy of this order.

7. In the result, the civil revision petition is allowed with the above direction and the order passed by the trial Court is set aside, and the trial court is directed to receive the suit papers and register the suit if it is in order. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

06th April, 2018

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