

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.R.P. No.6497 of 2017

ORDER:

Aggrieved by the order dated 10.10.2017 in I.A.No.641 of 2016 in un-numbered CMA No. of 2016 passed by learned Senior Civil Judge, Narayanpet dismissing the petition filed by the petitioner under Order XLI Rule 3 CPC to condone the delay of 113 days in filing the CMA, petitioner/plaintiff is before this Court.

2) Aggrieved by the order in I.A.No.348 of 2015 in O.S.No.112 of 2015, the petitioner filed CMA No. of 2016 with a delay of 113 days. Explaining the delay, the petitioner filed affidavit before the appellate Court stating that she was suffering with ill-health due to several diseases and therefore she could not meet her counsel and in the meanwhile, advocates were engaged in Courts boycott for separate High Court to the Telangana State and in those circumstances she could not file the appeal in time which is neither willful nor wanton. The appellate Court dismissed the said petition on the main observation that the petitioner did not produce any medical certificate in proof of her ill-health. The appellate Court further observed advocates boycott can not a ground for failure on the part of petitioner to file the appeal.

3) Though notices were served on the respondents in CRP, there is no representation.

4) It is true that petitioner has not produced any medical certificate in proof of her alleged ailment and hence the appellate Court was right in

discarding her alleged ill-health as ground for delay. However, the second ground is concerned, the finding of the appellate Court is not convincing for the reason, when the advocates engaged in boycott, the parties cannot be made to suffer for no fault of theirs. In view of valuable rights of the petitioner are at stake, the appellate Court ought to have considered her prayer with the right earnest.

5) Accordingly, this CRP is allowed by setting aside the order in I.A.No.641 of 2016 in unnumbered CMA No. 2016 and the delay of 113 days in filing the CMA is condoned. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 04.01.2018
Murthy

U. DURGA PRASAD RAO, J

