

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.7010 OF 2017

DATED 16.03.2018

Between :

Samala Santhosh Kumar being minor rep., by
His natural mother and guardian
Samala Rama Devi W/o.Sanaka Ramamurthy,
Aged 51 yrs, Occu : Housewife,
R/o.H.No.18-4-136, Kareemabad, Warangal.
.. Petitioner

And

Samala Jayalaxmi W/o.Chennaiah @ Chinnaiah,
Aged about 82 yrs, Housewife,
R/o.H.No.23-5-12, Shayampet Village, Hunter road,
Warangal & others.
.. Respondents



This court made the following :

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CIVIL REVISION PETITION No.7010 OF 2017

ORDER :

Petitioner was the plaintiff in O.S.No.95 of 2009. The suit was filed for partition of the suit schedule properties. Suit was dismissed on 22.07.2014 for non-prosecution. Praying to restore the suit petitioner/plaintiff filed application and as there was delay petitioner/plaintiff filed I.A.No.399 of 2015 to condone the delay of 222 days in filing the application to set aside the order of dismissal for non-prosecution. The said application was dismissed by the order against which this revision is filed.

2. Heard learned counsel for the petitioner and learned counsel for the respondents.

3. In the affidavit filed in support of the application to condone the delay, it is stated that the earlier counsel did not attend to the case on the day when it was posted on an erroneous impression that CRP.No.3223 of 2012 is pending on the file of this Court. In Paragraph No.3 the deponent avers that absence of counsel and non-representation on the day when the case was listed was not intentional but was under the impression of pending CRP. The deponent further state that though she was advised to file petition under Order IX Rule 9 of Code of Civil Procedure, within 30 days from the date of dismissal, but in view of the pendency of CRP, she could not approach the earlier counsel to enquire into the proceedings. It is further averred that the counsel is residing in Hyderabad and therefore, matter could not be informed and due to

financial problems and ill health, she could not engage any other counsel.

4. A bare reading of this averment would show that counsel on record as well as petitioner were aware of the dismissal of suit on 22.07.2014 and no steps were taken for restoration within the time. A vague averment is made that due to financial problem and ill health, matter could not be prosecuted but no substantive material is placed on record nor there is clear averment explaining the health condition of the deponent. Further, mere pendency of CRP is no ground not to prosecute the suit. Thus, the reason assigned for not taking immediate steps to seek restoration of the suit on the ground that CRP is pending, is again not a valid ground.

5. The parties to the litigation are entitled to prosecute their litigation and Court would be inclined to give due opportunity and adjudicate the matter on merits. Thus, if the suit is dismissed on the ground of non-prosecution, if valid reasons are assigned in support of the application for condonation of delay and for not prosecuting the matter earlier, Court may grant the relief of restoration and permit the petitioner to prosecute the litigation. It is the discretion of the Court in the given facts of a case. When delay enlarges burden is more on the party seeking condonation of delay to explain each day's delay with cogent reasons and satisfy the Court that inspite of due diligence or for reasons beyond party's control, immediate steps could not be taken and to condone the delay.

6. As noted above, the facts as stated by the petitioner in the affidavit itself would disclose that due diligence was not shown and that the party was aware of dismissal of suit but kept quiet in taking steps for restoration of the suit. Thus, I do not see any error in the decision arrived at by the Court below in not accepting the plea of the petitioner to condone the delay, and accordingly revision fails. The Civil Revision Petition is dismissed. There shall be no order as to costs. Pending miscellaneous petitions stand closed.

16th March, 2018
Rds

P.NAVEEN RAO,J



THE HON'BLE SRI JUSTICE P.NAVEEN RAO



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