

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.7040 OF 2017

ORDER:

This civil revision petition is filed under Section 115 of CPC, assailing the order dated 07.9.2017 passed in E.A.No.42 of 2016 in E.P. No.61 of 2006 in O.S.No.86 of 2004 on the file of the Court of I Additional Senior Civil Judge at Warangal.

2. In spite of service of notice, the respondent did not choose to appear and oppose the petition. Heard the learned counsel for the petitioner.

3. The respondent filed O.S.No.86 of 2004 against the petitioner for recovery of the suit amount. The trial Court decreed the suit in favour of the respondent and against the petitioner. In order to realise the decretal amount, the respondent filed E.P. No.61 of 2006. The executing Court dismissed the E.P. for non-appearance of the respondent. The respondent filed E.A. No.42 of 2016 under Section 5 of the Limitation Act to condone the delay of 189 days in filing the petition under Order XXI Rule 106 of CPC. The petitioner filed counter opposing the claim of the respondent. The executing Court, after considering the material available on record, allowed the petition. Hence, the revision petition.

4. A perusal of the record reveals that the respondent did not appear before the executing Court on 03.6.2015 and 07.9.2015; therefore, the Execution Petition was dismissed. A perusal of the affidavit filed by the respondent reveals that due to ill-health, the respondent could not appear before the executing Court on

03.6.2015 and 07.9.2015. The executing Court, after considering the material available on record, arrived at a conclusion that it is a fit case to condone the delay. While deciding the petitions filed under Section 5 of Limitation Act, the approach of the Court shall be pragmatic but not pedantic. The Court has to consider whether the person, who filed the petition under Section 5 of Limitation Act, has assigned reasons much less cogent and valid reasons for condoning the delay. In the instant case, the respondent has assigned reasons much less cogent and valid reasons for his non-appearance before the executing Court on 03.6.2015 and 07.9.2015. The executing Court has satisfied with the reasons assigned by the respondent while condoning the delay in filing the petition under Order XXI Rule 106 of CPC. If the petition is dismissed, it may not be possible for the respondent to realise the fruits of the decree. Even if the petition is allowed, the same would not cause any prejudice to the rights of the petitioner. I am fully agreeing with the findings recorded by the executing Court. There is no illegality, irregularity or infirmity in the impugned order.

5. Hence, the civil revision petition is dismissed. Miscellaneous petitions if any pending in this revision petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 23.8.2018

YS