

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.6832 of 2017

ORDER:

1 This petition is filed under Article 227 of the Constitution of India, challenging the order dated 13.10.2017 passed in I.A.No.4157 of 2017 in A.S.S.R.No.23146 of 2007 on the file of the Court of the Chief Judge, City Civil Court, Hyderabad.

2 Heard the learned counsel for both parties.

3 The point for consideration is whether there is any irregularity, illegality or impropriety in the impugned order?

4 A perusal of the record reveals that the respondent filed O.S.No.1882 of 2009 against the petitioner and other defendants on the file of the Court of the V Senior Civil Judge, City Civil Court, Hyderabad for recovery of the suit amount. The petitioner, who is the principal borrower, after receiving summons, remained *ex parte*. Basing on the material available on record, the trial Court passed *ex parte* decree. Thereafter, the petitioner filed a petition to set aside the *ex parte* decree passed against him. The trial Court allowed that petition permitted the petitioner to contest the suit. After full fledged trial, the trial Court decreed the suit with interest in favour of the respondent and against the petitioner and respondent Nos.2 to 6 on 19.01.2016.

4 Aggrieved by the judgment and decree dated 19.01.2016 passed by the trial Court, the petitioner preferred A.S.S.R.No.23146 of 2017 before the Chief Judge, City Civil Court, Hyderabad. In the said appeal, the petitioner filed I.A.No.4157 of 2017 to condone the delay

of 549 days in preferring the appeal. The respondent filed counter, *inter alia*, contending that the petitioner filed the petition with an ulterior motive to drag the matter. The appellate court, after considering the material available on record, dismissed the petition. Hence the present Civil Revision Petition.

5 As per the averments made in the affidavit filed in support of the petition, the petitioner could not file the appeal within the period of limitation due to ill-health of his mother. Except the averments made in the affidavit, there is no other evidence much less cogent and convincing evidence to establish that the mother of the petitioner was ill for a period of 549 days.

6 As observed earlier, even after receipt of summons, the petitioner did not choose to contest the suit. Hence the trial Court passed an *ex parte* decree. Thereafter, the petitioner filed a petition to set aside the *ex parte* decree. This clearly indicates the intention of the petitioner to drag the matter as long as possible. The petitioner filed the petition to set aside the *ex parte* decree after the order of attachment of the salary of his wife was passed. It is a settled principle of law that the person who files application under Section 5 of the Limitation Act has to explain each day's delay in filing the appeal. In the present case, the petitioner filed the petition to condone abnormal delay of 549 days for which the petitioner has not assigned reasons much less cogent and valid reasons. The possibility of taking this type of pleas in order to overcome the laches on the part of the petitioner cannot be ruled out completely. If this type of petitions are allowed, it may not be possible for the respondent to realise the decretal amount. The appellate court, after taking into

consideration the material available on record, more particularly, the conduct of the petitioner, arrived at a conclusion that the petitioner has not assigned reasons much less valid reasons to condone the abnormal delay of 549 days in preferring the appeal, dismissed the petition. I am fully endorsing the findings recorded by the appellate court. I see no illegality, irregularity or impropriety in the impugned order, warranting interference of this court in exercise of jurisdiction under Article 227 of the Constitution of India and accordingly the Civil Revision Petition is liable to be dismissed.

7 In the result, the Civil Revision Petition is dismissed. No costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

Date: 13.12.2018
Kvsn

T. SUNIL CHOWDARY, J

