

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.7192 of 2017

ORDER:

This revision petition is filed under Section 115 of Civil Procedure Code assailing the orders dated 02.11.2017 in E.A.No.24 of 2015 in E.A.No.415 of 2014 in E.P.No.113 of 2010 in O.S.No.233 of 2009 on the file of the Court of Principal Senior Civil Judge, Kadapa.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the material available on record.

3. The petitioner filed E.A.No.415 of 2014 in E.P.No.113 of 2010 in O.S.No.233 of 2009 on the file of the Court of Principal Senior Civil Judge, Kadapa under Order XX1 Rule 58 CPC. The trial Court dismissed the said petition for default on 14.12.2015. The petitioner filed E.A.No.24 of 2015 in E.A.No.415 of 2014 in E.P.No.113 of 2010 to condone the delay of 139 days in filing the petition to set aside the default order. Respondents filed counter opposing the petition. After affording a reasonable opportunity to both parties, the trial Court dismissed the petition. Hence, the present revision.

4. It is the case of the petitioner that her husband was admitted in the hospital at Hyderabad somewhere in the month of October 2015. It is the further case of the petitioner

that her husband died on 18.11.2015, therefore, she could not attend the Court. The trial Court dismissed the petition on the sole ground that the petitioner has not mentioned the exact date on which she came to know about the dismissal of the petition. It is a matter of common knowledge that the wife has to look after the welfare of her husband, more particularly, at the time of his ill health. It is also a known fact that a Hindu widow will not leave the house for certain period after the death of her husband. Admittedly, the petitioner is a Hindu. While deciding the petitions of this nature, the approach of the Court shall be pragmatic and not pedantic. The Court has to consider the over all facts and circumstances of the case and not insist on technicalities in certain cases. The factum of death of the husband of the petitioner is not in dispute. In such circumstances, it may not be possible for the petitioner to attend the Court. The petitioner has assigned reasons much less cogent and valid reasons for her non-appearance before the trial Court on 14.12.2015.

5. Taking into consideration the facts and circumstances of the case, I am of the considered view that it is a fit case to condone the delay of 139 days in filing a petition to restore the claim petition.

6. In the result, the C.R.P. is allowed setting aside the order dated 02.11.2017 in E.A.No.24 of 2015 in E.A.No.415 of 2014 in E.P.No.113 of 2010 in O.S.No.233 of 2009 on the file of the Court of Principal Senior Civil Judge, Kadapa. The E.P. is pending from the year 2010 onwards. Therefore, the trial Court is hereby directed to dispose of the E.A.No.415 of 2014 if restored, as expeditiously as possible, preferably within a period of three months from the date of receipt of copy of this order. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

5th January 2018
Rns

T.SUNIL CHOWDARY, J

