

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.961 of 2019

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908, is filed by the petitioner/plaintiff, challenging the order, dated 23.01.2019, passed in I.A.No.588 of 2016 in A.S.S.R.No.1291 of 2016 by the Principal District Judge at Khammam, whereby, the petition filed by the petitioner/plaintiff to condone the delay of 120 days in filing the appeal against the order, dated 18.09.2015, passed in O.S.No.28 of 2004, by the Senior Civil Judge at Sathupally, was dismissed.

2. The facts that led to filing of this Civil Revision Petition, in brief, are as follows:

The petitioner/plaintiff filed a suit in O.S.No.28 of 2004 for recovery of possession of the suit schedule property before the Senior Civil Judge at Sathupally. The said suit was dismissed on merits by judgment, dated 18.09.2015. Aggrieved by the same, the petitioner/plaintiff filed an appeal before this Court 16.02.2016 and this Court returned the appeal on 27.02.2016 on the ground of pecuniary jurisdiction. Subsequently, the petitioner/plaintiff filed an appeal in A.S.S.R.No.1291 of 2016 before the Court below along with the subject interlocutory application for condoning the delay of 120 days in filing the appeal. The subject interlocutory application was dismissed by the Court below vide impugned order, dated 23.01.2019. Aggrieved by the same, the present Civil Revision Petition is filed.

3. Heard the learned counsel for the petitioner/plaintiff and perused the record.

4. The learned counsel for the petitioner/plaintiff would contend that though the petitioner/plaintiff has shown sufficient cause to condone the delay, the Court below erroneously dismissed the subject interlocutory application to condone the delay of 120 days in preferring the appeal, without there being any justification. The Court below ought to have considered the subject interlocutory application, pursuant to the decisions rendered by the Apex Court. The impugned order is erroneous and ultimately prayed to set aside the same and allow the subject Interlocutory application as prayed for.

5. The Court below, while dealing with the subject interlocutory application, was pleased to dismiss the same assigning several reasons. It had extensively dealt with the subject interlocutory application. It also recorded a finding that while considering an application to condone delay, the conduct, behaviour and attitude of parties relating to their inaction or negligence are required to be taken into consideration. The explanation offered should not be concocted and fanciful. Normally, liberal justice oriented approach should be adopted in considering the application for condonation of delay. The ultimate motto of the Courts is to render substantial justice.

6. It is also evident from the record that the petitioner/plaintiff is an advocate and very much aware of the legal proceedings relating to the subject unregistered appeal. In the original affidavit

filed in support of the application to condone the delay, there was no reference of treatment said to have been taken by the revision petitioner/plaintiff. In the subsequent affidavit, it is stated that the revision petitioner/plaintiff was suffering from jaundice, whereas in the additional affidavit, it is stated that the revision petitioner/plaintiff was suffering from stomach ache. No proper reason was explained for not filing the medical record relating to the illness or the treatment said to have been taken by the petitioner/plaintiff, in the application filed at the first instance. The petitioner/plaintiff made inconsistent statements and failed to substantiate that there was sufficient cause for condoning the delay. Moreover, no legally sustainable justification is given to condone the delay. The Court below had elaborately dealt with the contentions raised on behalf of the petitioner/plaintiff and negated the same. The Court below had rightly exercised the jurisdiction vested in it. There is no infirmity or illegality in the order under challenge. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

7. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand dismissed.

18th September, 2019
Bvv

Dr. SHAMEEM AKTHER, J