

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.1399 of 2018

ORDER:

Heard Sri Md. Ali, learned counsel for the petitioner and Sri Gade Venkateswara Rao, learned counsel for the respondent Nos.1 and 2.

2. This Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.05-02-2018 in I.A.No.4875 of 2017 in A.S.S.R.No.23204 of 2017 of the Chief Judge, City Civil Court, Hyderabad.

3. Petitioner herein is defendant No.9 in O.S.No.408 of 1998 which was decreed on 01-06-2017.

4. Petitioner by mistake preferred appeal before the High Court on 04-09-2017 without realizing that the appeal lies before the Chief Judge, City Civil Court, Hyderabad.

5. The Registry returned the file stating that the appeal is not maintainable in the High Court and thereafter, the appeal was presented before the Chief Judge, City Civil Court, Hyderabad, with a delay of 51 days in filing the same.

6. The appeal was numbered as A.S.S.R.No.23204 of 2017. In view of the delay of 51 days in filing the same, petitioner filed I.A.No.4875 of 2017 under Section 5 of the Limitation Act, 1963 to condone the delay of 51 days in filing the appeal pointing out that the

appeal was filed mistakenly before the High Court and after it was returned, it was presented before the Chief Judge, City Civil Court, Hyderabad, that it was a *bona fide* mistake and the said delay of 51 days be condoned.

7. Respondent Nos.1 to 3 filed a counter opposing the condonation of delay. They contended that there is no mistake at all in filing the appeal before the High Court and even if there is such a mistake, ignorance of law is not an excuse and that the delay is not liable to be condoned.

8. By order dt.05-02-2018, the Court below rejected the said application. It held that the petitioner failed to give reasons for the delay of 51 days and simply stated that he filed the appeal with delay because of a mistake and there is no sufficient reason assigned by the petitioner for condoning abnormal delay of 51 days.

9. Assailing the same, this Revision Petition is filed.

10. Though notice was sent by the learned counsel for the petitioners to the address of 3rd respondent, as per the cause title in the suit, it is returned with an endorsement that he had left without instructions. In this view of the matter, it is also deemed to be served.

11. Respondent Nos.4 to 11 are shown to be not necessary parties in the Revision Petition.

12. Though learned counsel for respondent Nos.1 and 2 had vehemently opposed the condonation of delay, since the delay is not

inordinate, it is liable to be condoned in the facts and circumstances of the case having regard to the *bona fide* mistake of the counsel in preferring the appeal in the High Court against the judgment in O.S.No.408 of 1998 instead of filing it before the Chief Judge, City Civil Court, Hyderabad. Also substantial stakes are involved in the appeal and the petitioner cannot be deprived of an opportunity to have a hearing on merits in the appeal because of the counsel's mistake.

13. So I am of the opinion that the Court below is not right in dismissing I.A.No.4875 of 2017.

14. Accordingly, the Revision Petition is allowed; order dt.05-02-2018 in I.A.No.4875 of 2017 in A.S.S.R.No.23204 of 2017 of the Chief Judge, City Civil Court, Hyderabad, is set aside; the said I.A. is allowed; and the Court below is directed to number the appeal and proceed further in the matter. No costs.

15. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-02-2019
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