

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.2210 OF 2017

ORDER:

This revision, under Section 115 of the Code of Civil Procedure, 1908, is filed by the petitioner/defendant aggrieved by the order dated 14.03.2017 passed in I.A.No.7015 of 2016 in A.S.S.R.No.16148 of 2016 by the Chief Judge, City Civil Court, Hyderabad, whereby the application filed by the revision petitioner/defendant under Section 5 of Limitation Act, 1963 read with Section 151 of CPC, to condone the delay of 172 days in filing the appeal, was dismissed.

2. Heard learned counsel for the revision petitioner/defendant, learned counsel for the respondent/plaintiff and perused the record.

3. Learned counsel for the revision petitioner/defendant would contend that originally the subject appeal was filed before the lower Appellate Court and when the lower Appellate Court returned the appeal to file the same before this Court, as the decretal amount is beyond the jurisdiction of the Court, the said appeal was filed before this Court. This Court *vide* order dated 29.02.2016 returned the appeal with a direction to file the same before proper Court. In pursuance of the said order, the appeal was again filed before the lower Appellate Court. As such, the delay of 172 days in filing the appeal was caused, which is neither wilful nor wanton. The Court below erroneously passed the impugned order and ultimately prayed to allow the revision petition as prayed for.

4. On the other hand, learned counsel for the respondent/plaintiff would contend that the delay in filing the appeal is 481 days, but not

172 days. The said delay is enormous and no sufficient cause has been shown by the revision petitioner. The lower Appellate Court had assigned number of reasons for dismissing the subject Interlocutory Application. It is further contended that the Original Suit is of the year 2012 and execution proceedings are pending. Learned counsel conceded that the said delay can be condoned subject to the condition of the revision petitioner/defendant paying 50% of the decretal amount to the respondent/plaintiff.

5. In view of the submissions made by both sides, the point that arises for determination is:-

“Whether the impugned order dated 14.03.2017 passed in I.A.No.7015 of 2016 in A.S.S.R.No.16148 of 2016 by the learned Chief Judge, City Civil Court, Hyderabad, is liable to be set aside ?”

6. POINT:- Admittedly, the Original Suit is of the year 2012 and execution proceedings are pending before the Execution Court. It is contended on behalf of the revision petitioner that the said delay was occurred in filing the copy application, obtaining copy of judgment and decree and returning of appeal to file the same before proper Court.

7. In fact, the subject appeal lies before the District Court but not before the High Court. Admittedly, the revision petitioner has filed the appeal before a wrong Court, thereafter it was returned to be filed before proper Court. However, substantial issues/points in the appeal are required to be examined and determined.

8. In the given circumstances of the case, the impugned order dated 14.03.2017 is liable to be set aside.

9. Accordingly, this Civil Revision Petition is allowed and the impugned order dated 14.03.2017 passed in I.A.No.7015 of 2016 in A.S.S.R.No.16148 of 2016 by the Chief Judge, City Civil Court, Hyderabad, is set aside and I.A.No.7015 of 2016 stands allowed subject to the following terms and conditions:

1. The revision petitioner/defendant shall deposit half of the decretal amount before the lower Appellate Court within four weeks from the date of receipt of a copy of this order.
2. On such deposit, the respondent/plaintiff is permitted to withdraw the same without furnishing any security.
3. After the said amount is deposited by the revision petitioner within the stipulated time, the lower Appellate Court is directed to assign regular number to the appeal if the same is otherwise in order and proceed to determine the appeal in accordance with law.
4. Further, till the appeal is numbered, there shall be stay of execution proceedings before the Execution Court.

The Miscellaneous Petitions, if any, pending shall stand closed.

No costs.

Date: 18.02.2020
ssp

Dr. SHAMEEM AKTHER, J