THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.5939 OF 2017

ORDER:

This revision, under Article 227 of the Constitution of India, is filed by the petitioner/plaintiff aggrieved by the order dated 10.10.2017 passed in I.A.No.3407 of 2017 in A.S.S.R.No.12463 of 2016 by the Chief Judge, City Civil Court, Hyderabad, whereby the application filed by the revision petitioner/plaintiff under Section 5 of Limitation Act, 1963, to condone the delay of 114 days in filing the appeal, was dismissed.

2. In spite of publishing the notice in "The Siasat" Urdu Daily Newspaper, there is no representation for the respondents.

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

4. Learned counsel for the revision petitioner/plaintiff would submit that in O.S.No.285 of 2014, the judgment and decree was passed on 05.02.2016. The revision petitioner filed a copy application on 09.02.2016 and obtained the copy of the said judgment on 13.05.2016. As the petitioner was suffering from Jaundice, she could not contact her Advocate immediately. Hence, the delay of 114 days was occurred in filing the appeal. It is neither wilful nor wanton. The Court below ought to have condoned the said delay. However, the Court below erroneously dismissed the subject Interlocutory Application and ultimately prayed to set aside the impugned order and allow the civil revision petition as prayed for.

5. It is specifically stated in the affidavit that the petitioner was suffering from jaundice. Therefore, she could not contact her Advocate and file the appeal within the stipulated time. There is record to show that the copy application was filed on 09.02.2016 and the copy of judgment was obtained on 13.05.2016. It is made out from the record that the delay of 114 days in filing the appeal is neither wilful nor wanton. The substantial issues that emerge in the appeal are required to be adjudicated. Under these circumstances, the impugned order dated 10.10.2017 in I.A.No.3407 of 2017 in A.S.S.R.No.12463 of 2016 by the Chief Judge, City Civil Court, Hyderabad, is liable to be set aside.

6. In the result, the Civil Revision Petition is allowed and the impugned order dated 10.10.2017 in I.A.No.3407 of 2017 in A.S.S.R.No.12463 of 2016 by the Chief Judge, City Civil Court, Hyderabad, is set aside. Consequently, I.A.No.3407 of 2017 is allowed and the delay of 114 days in filing the appeal is condoned. No costs.

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

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Dr. SHAMEEM AKTHER, J

Date: 20.02.2020
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