

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY THE TWENTY SECOND DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CIVIL REVISION PETITION NO: 3211 OF 2023

Petition under Section 115 of CPC against the Order dated 14.08.2023 in I.A.No. 3 of 2021 in OS. No. 142 of 2012, on the file of the Court of the The Principal District Judge at Peddapalli.

Between:

Thakur Parvathi Bai, W/o. Late Narayana Singh, Age. 65 Years, Occ. Agriculture,
R/o. H. No. 2-3-83, Shivalayam Street, Peddapalli Village, Mandal and District.

...PETITIONER/PETITIONER/PLAINTIFF

AND

Bojja Mallaiah, S/o. Rajaiah, Age. 65 Years, Occ. Retired SCCL Employee, R/ o.
Shanthinagar Locality, Peddapalli Village, Mandal and District.

...RESPONDENT/RESPONDENT/DEFENDANT

Counsel for the Petitioner : Sri. K. Venumadhav

Counsel for the Respondent : Mr. Srinivas Kudumula

The Court made the following:

THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

CRP.NO.3211 OF 2023

JUDGMENT:

Being aggrieved by the order dated 14-08-2023 in IA.No.3 of 2021 in OS.No.142 of 2012 on the file of Principal District Judge, Peddapalli, where under, her application under Section 5 of Limitation Act with a prayer to condone the delay of 60 days in presenting the application under Order 9 Rule 9 of Civil Procedure Code (for short 'C.P.C.') for restoration of the suit which was dismissed for default, the petitioner in the above referred Interlocutory Application filed this Civil Revision Petition on the following grounds.

2. The impugned order is erroneous in law and against the available material on record, thereby, it is liable to be set aside. The Court below failed to look into the averments made by the petitioner in the affidavit filed in support of the petition and failed to consider the grounds raised for condoning the delay of 60 days. The Court below failed to consider that a fair opportunity should be given to her for proceeding with the trial so that the suit will be decided on merits. The Court below could have given an

opportunity to the petitioner herein to contest the suit which was filed in respect of valuable rights on immovable property. Therefore, according to the petitioner, the Court below failed to exercise the jurisdiction in passing the impugned order, as such, it is just and necessary to set aside the impugned order and allow the petition, so that an opportunity shall be given to the petitioner.

3. As could be seen from the impugned order and other material placed before this Court, it seems the petitioner is plaintiff in OS.No.142 of 2012. When the suit was posted for trial on 06-04-2017, as there was no representation on her behalf, the trial Court dismissed the suit for default. Thereafter, the petitioner who was not in a position to file appropriate application for the restoration of the suit within the time of limitation, filed the above referred Interlocutory Application vide IA.No.3 of 2021 under Section 5 of Limitation Act and sought for condoning the delay of 60 days in preferring the petition.

4. As could be seen from the affidavit filed in support of the petition, the only reason that was explained for her failure to attend the Court on 06-04-2017 was the ill-ness of

the petitioner. The petitioner has claimed that as she was suffering from Gastroenteritis, she was unable to appear before the Court, she had no chance to inform her counsel. Therefore, the suit was dismissed for default. The petitioner has also claimed that her valuable rights in respect of suit schedule property are involved in the suit. Her absence on the above referred date was purely accidental, therefore, sought for condoning the delay in filing the application to restore the suit.

5. The respondent/defendant opposed the petition and as per the counter filed by the respondent, it was specifically contended that the petitioner who is supposed to file petition for restoration of the suit within 30 days from 06-04-2017 did not file any such application but filed the petition on 04-07-2017 i.e., beyond 90 days but without any piece of evidence to show that she was suffering from ill-ness. The respondent has also claimed that the petitioner did not assign any proper reason for condoning the delay, as such, sought for dismissal of the petition.

6. The trial Court having appreciated the averments made by the petitioner and respondent, came to a conclusion

that there are no merits in the petition filed by the petitioner and dismissed the same under the impugned order. It seems, the petitioner herein has filed the main suit on 18-12-2017 and though issues were settled on 17-02-2016, in spite of availing 13 adjournments with a specific direction to her to get ready for trial, she failed to attend the Court. It also appears that the Court below passed over the matter till 4.30 p.m., and as there was no representation, dismissed the suit for default.

7. The reason explained by the petitioner for her absence before the trial Court on 06-04-2017 was alleged Gastroenteritis. She did not file any medical record and she is not able to explain how she was prevented from attending the Court or for not approaching the counsel for such a long period of 90 days for filing the application. Even though, she was suffering from such ill-ness which is not evident by any medical record, she could have informed her counsel to seek an adjournment. The record indicates that there was no such attempt by the petitioner and counsel for the petitioner did not attend the Court though the matter was passed over till 4.30 p.m.,

8. The Court below while placing reliance on a Judgment between '**Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai**'¹ was of the opinion that the petitioner is not able to explain any sufficient cause for her absence before the trial Court. Reliance was also placed on another Judgment between '**Balwant Singh Vs. Jagdish Singh**'².

9. It is true, the suit was filed in 2012 and though the issues were settled in 2016, the petitioner did not evince any interest to commence the trial having availed 13 adjournments. As rightly observed by the Court below, there is no evidence or proof that petitioner is suffering from such a bad health which can prevent her from representing her counsel. Therefore, the Court below rightly dismissed the petition, as such, revision deserves to be dismissed.

10. In the result, the petition is dismissed.

Consequently, Miscellaneous applications if any, are closed. No costs.

1(2012) 5 SCC 187
2(2010) 8 SCC 685

Sd/- B.SARASWATHI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal District Judge at Peddapalli. (With records)
2. One CC to Sri. K. Venumadhav, Advocate [OPUC]
3. One CC to Mr. Srinivas Kudumula, Advocate [OPUC]
4. Two CD Copies

DL

gh CHR

HIGH COURT

DATED:22/01/2024

ORDER

CRP.No.3211 of 2023



DISMISSING THE C.R.P.

⑥ CHK 23/3/24