

HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION No.4562 of 2012

-
Dated: 29.11.2013

-
Between:

Karanam Tata Rao.

.....Petitioner

And

Vadlamuri Bangara Raju.

.....Respondent

HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION No.4562 of 2012

ORDER :

This civil revision petition under Section 115 of CPC is filed by the defendant in the suit in O.S.No.49 of 2006 on the file of learned Additional Senior Civil Judge (Fast Track Court), Visakhapatnam, aggrieved by order dated 4th of June 2012, passed in I.A.No.2242 of 2010 in A.S.GR.No.12050 of 2010.

Respondent herein has filed the suit against the petitioner, in O.S.No.49 of 2006 for recovery of money. The said suit was decreed by judgment and decree dated 30.04.2009. As against the same, the petitioner/defendant carried the matter in appeal with a delay of 460 days. To condone such delay, he has filed an application in I.A.No.2242 of 2010 under Section 5 of the Limitation Act, 1963. The said application is dismissed by impugned order, by recording a finding that the petitioner has not assigned valid reasons to condone the delay of 460 days. Hence, this revision.

After filing of this revision, while issuing notice before

admission on 21.09.2012, this Court also permitted the learned counsel for petitioner to send notice to the respondent by registered post with acknowledgement due and file proof of service. Accordingly, proof of service is filed in U.S.R.No.1360 of 2012. Though the acknowledgement indicates that the respondent is served, there is no appearance on his behalf, to oppose this petition.

Heard learned counsel for petitioner and perused the affidavit and counter affidavit filed in I.A.No.2242 of 2010. In the affidavit filed in support of the I.A., it is stated by the petitioner that his Advocate received the judgment and decree on 02.06.2009, but due to non-availability of funds, appeal could not be filed in time. It is also stated that he could not meet his counsel for filing the appeal in time, as his wife was sick, as such, the delay occurred.

In the counter affidavit filed in the said I.A., it is stated that the petitioner is working as a Mechanic in A.P. State Road Transport Corporation and that the delay of 460 days did not occur on account of non-availability of funds, as pleaded by the petitioner.

The suit is for recovery of money based on pronote. It is the case of petitioner that no amount was lent to him under the suit promissory note. In any event, as it is the case of petitioner that immediately after receipt of judgment and decree by the Counsel, he could not file the appeal due to non-availability of required funds, and

further, his wife was also not well during the relevant time, this Court is of the view that sufficient reasons are indicated to condone the delay. In spite of the specific reasons assigned in the affidavit filed in support of the application for condonation of delay, without considering the same, the trial Court has rejected the application.

As the decree obtained by the respondent is for recovery of money and the remedy of first appeal is a substantive remedy, this Court is of the view that it is a fit case to condone the delay in filing the appeal.

For the aforesaid reasons, this civil revision petition is allowed and the order under challenge is set aside. Consequently, I.A.No.2242 of 2010 in A.S.GR.No.12050 of 2010 stands allowed. No order as to costs.

Miscellaneous applications pending, if any, shall stand closed.

R. SUBHASH REDDY, J

29th November 2013

ajr