

THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI**CIVIL REVISION PETITION NO.666 OF 2023****ORDER:**

Aggrieved by the orders passed in IA.No.1532 of 2018 in OS.No.5 of 2012 dated 12.12.2022 on the file of Principal Junior Civil Judge, Adoni, the present revision is filed.

2. The petitioner is the plaintiff and the respondents are the defendants in the court below. The petitioner herein filed a suit vide OS.No.5 of 2012 on the file of Principal Junior Civil Judge, Adoni for permanent injunction restraining the defendants and their men from obstructing or interfering in any manner from using the Rastha by taking the bullock cart which is existing from time immemorial, which is running from East-West from the lands of the defendants to reach the land of the plaintiff. When the suit is coming for trial, the same was dismissed for non prosecution on 24.07.2017. In those circumstances, the present I.A.No.1532 of 2018 has been filed under Section 5 of Limitation Act to condone the delay of 339 days in filing the petition for restoration of the suit, on the ground that the petitioner is not keeping good health and his counsel before the court below on that particular day was in some other court conducting trial work. Due to

ill health the petitioner did not contact the counsel for filing the petition for restoration of suit as such occurred delay in filing the petition for restoration of the above suit.

3. The respondents/defendants filed counter opposing the same. The court below after hearing both parties, dismissed the said application vide its order dated 12.12.2022. Aggrieved thereby, the present revision is filed.

4. Heard Mr. Y.Koteswara Rao, learned counsel for the petitioner and Mr. B.Sarvotham Reddy, learned counsel for the respondents.

5. Learned counsel for the petitioner in elaboration to what has been raised in the grounds contended that, the petitioner on that particular day could not appear before the court due to ill health and his counsel also was held up in another court and hence, there was no representation. Consequently, the court below dismissed the suit for non prosecution. Thereafter, the petitioner could not give instructions to his counsel to file restoration application in time due to ill health. After recovering from ill health, the present application has been filed to condone the delay of 339 days in filing restoration petition. But, the court below dismissed the said application erroneously without assigning any proper reasons.

6. Learned counsel for the petitioner further contended that non representation on 24.07.2017 is neither wilful nor wanton. The court below ought to have given one more opportunity to the petitioner/plaintiff to prosecute his suit. However, the delay application was dismissed without considering the reason offered by the petitioner and further failed to see that no prejudice will be caused to the defendants. The delay can always be condoned and the suit be restored by compensating the defendants by imposing costs. However, the court below without considering the same dismissed the application.

7. Learned counsel for the petitioner further contended that, the court below dismissed the application with an observation that the petitioner has filed this condonation of delay application without specifying any reasonable cause. The court below while dismissing, observed that the petitioner in his chief examination affidavit stated that he is not having good health and unable to contact his counsel to file his chief examination affidavit. Whereas, in the cross examination, it is stated that on the day of dismissal of the suit i.e., OS.No.5 of 2012, he approached his counsel which is contrary to the pleadings mentioned in the affidavit. The court below by taking into consideration the judgment reported in *Kommidi Mahender Reddy Vs.*

*Kommidi Suryamma*¹ has dismissed the application through the said judgment is not applicable to the present facts of the case.

8. Learned counsel further contended that time and again Hon'ble Apex Court has categorically held that delay should not come in the way of rendering substantial justice. The court below ought to have imposed costs by allowing the I.A, instead of dismissing the same. Hence, prayed to allow the revision.

9. On the other hand, the learned counsel for the respondent Sri B.Sarvotham Reddy contended that, the petitioner herein did not come to the court with clean hands. In fact a suit vide OS.No.167 of 2010 filed by the petitioner/plaintiff was partly allowed and aggrieved thereby, he preferred an appeal and he admitted in his cross examination that on the day of dismissal of suit in OS.No.5 of 2012, he came to the court and the said fact was taken into consideration while deciding the delay application by the court below. As the petitioner has failed to explain each and every day delay in his affidavit while asking to condone the same, the court below has rightly dismissed the said application by giving cogent reasons and there are no valid reasons raised by the learned counsel for the petitioner before this Court in the

¹ 2007 (3) ALT 619

revision and as such no indulgence can be shown on the petitioner and prayed to dismiss the Civil Revision Petition.

10. Perused the record.

11. The present I.A.No.1532 of 2018 was filed under Section 5 of the limitation Act to condone the delay of 339 days in filing the petition for restoration of the suit which is filed for permanent injunction restraining the defendants from interfering with the usage of 'Rasta'. No doubt the petitioner has not explained the reasons for the delay in his application. But, the court should have considered the same by imposing some costs.

12. Ordinarily, the litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible adjudication is done on merits. Though the suit is of the year 2012, still the same is pending and if the said application is not considered, the rights of the petitioner will be affected. Keeping in view of the same, this court is inclined to consider the revision by passing following order.

13. The Civil Revision Petition is allowed setting aside the order passed in IA.No.1532 of 2018 in OS.No.5 of 2012 dated 12.12.2022 on the file of Principal Junior Civil Judge, Adoni, on a condition of payment of costs at Rs.1500/- (Rupees Fifteen Hundred Only) to the

respondents within two weeks from the date of receipt of this order. If the costs are not paid as directed by this Court, the order passed in I.A holds good. There shall be no order as to costs.

As a sequel, miscellaneous applications, pending, if any, shall also stand closed.

JUSTICE RAVI CHEEMALAPATI

March 28, 2023
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