

HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE EIGHTEENTH DAY OF JULY
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI
CIVIL REVISION PETITION NO: 2346 OF 2015

Between:

1. KUDIPUDI SURYA RAO S/o.Pentayya, Occ: Agricultural Coolie
R/o.D.No.4-73, Tallarevu, East Godavari District, A.P.

...PETITIONER(S)

AND:

1. PILLI SATHI RAJU & 5 ORS S/o.Pentayya, Occ: Retired Teacher
R/o.Tallarevu, East Godavari District, A.P.
2. Surampudi Satyavathi D/o.Pilli Sathi Raju
R/o.Tallarevu, East Godavari District, A.P.
3. Penumalla Sathi Reddy [Died] -
4. Penumalla Narendra Vara Prasad S/o.Pilli Sathi Reddy, Occ: Student
R/o.Tallarevu, East Godavari District, A.P.
5. Penumalla Rama Lakshmi D/o.Pilli Sathi Reddy, Occ: Student
R/o.Tallarevu, East Godavari District, A.P.
6. Penumalla Suryanarayanamma WD/o.Pilli Sathi Reddy
R/o.Tallarevu, East Godavari District, A.P.

...RESPONDENTS

Counsel for the Petitioner(s): SARIPALLI SUBRAHMANYAM

Counsel for the Respondents: TURAGA SAI SURYA

The Court made the following: ORDER

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CIVIL REVISION PETITION NO.2346 of 2015

Between:

Kudipudi Surya Rao

... Petitioner/Petitioner/Appellant

Versus

Pilli Sathi Raju and five (05) others

...Respondents/Respondents

* * * * *

DATE OF ORDER PRONOUNCED : 18.07.2023

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

1. Whether Reporters of Local Newspapers
may be allowed to see the Order? Yes/No
2. Whether the copy of Order may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the
fair copy of the Order? Yes/No

JUSTICE B.V.L.N.CHAKRAVARTHI

*** HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ CIVIL REVISION PETITION NO.2346 of 2015

% 18.07.2023

Between:

Kudipudi Surya Rao

... Petitioner/Petitioner/Appellant

Versus

Pilli Sathi Raju and five (05) others

...Respondents/Respondents

- ! Counsel for the Revision petitioner** : Sri Saripalli Subrahmanyam
- ^ Counsel for the Respondent Nos.1 and 2** : - - -
- ^ Counsel for the Respondent No.3** : 'Died'
- ^ Counsel for the Respondent Nos.4 to 6** : Sri K.Chidambaram

< Gist:

> Head Note:

? Cases referred:

1. **Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai** reported in **(2012) 5 Supreme Court Cases 157.**
2. **Sugandhi (Died) by LRs and others vs. P.Rajkumar** reported in **(2020) 10 Supreme Court Cases 706.**
3. **Basawaraj and another vs. Special Land Acquisition Officer** reported in **2013 (6) ALT (SC) 43 (D.B.)**

This Court made the following:

THE HONOURABLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

CIVIL REVISION PETITION NO.2346 OF 2015

O R D E R:

This revision-petition is directed against the Order, dated 17.03.2015 in I.A.No.121 of 2014 in A.S.No.120 of 2012 on the file of I Additional Senior Civil Judge, Kakinada.

2. The revision-petitioner is the appellant in A.S.No.120 of 2012 on the file of I Additional Senior Civil Judge, Kakinada. The learned I Additional Senior Civil Judge 'Dismissed' the appeal *vide* A.S.No.120 of 2012 on 03.10.2012, for default. The revision-petitioner filed I.A.No.121 of 2014 under Section 5 of the Limitation Act, 1963 (for brevity 'the Act') to condone the delay of 412 days in filing an application to set-aside the above referred dismissal order in the appeal.

3. The revision-petitioner in his affidavit filed before the First Appellate Court stated that for the last sixteen (16) months he was seriously ill and therefore, he could not meet his counsel to give instructions and four days prior to the date of affidavit, he visited the office of his counsel, and he was informed that the appeal was 'Dismissed for default' on 03.10.2012 due to non-prosecution.

4. The respondent No.4 opposed the application and in his verified counter, it was contended that the cause pleaded by the revision-petitioner is false and if really a person suffers ill-health from 25.09.2012 to 30.05.2013, he will have medical record, but the revision-petitioner simply produced a certificate with false information managing the doctor and therefore, the cause pleaded by the revision-petitioner is devoid of any merits.

5. The learned First Appellate Court, upon considering the rival contentions held that the revision-petitioner neither examine the doctor nor produce the medical record with prescriptions and diagnostic report proving the alleged ill-health during the period i.e., from 25.09.2012 to 30.05.2013 and dismissed the application.

6. In the light of the above context of the revision petitioner/ appellant and the respondents, the point that arises for consideration is: -

“Whether the First Appellate Court committed any material irregularity in the impugned Order, dated 17.03.2015 passed in I.A.No.121 of 2014 in A.S.No.120 of 2012 on the file of I Additional Senior Civil Judge, Kakinada?”

7. **P O I N T** : -

It is an admitted fact that the revision-petitioner preferred A.S.No.120 of 2012 on the file of I Additional Senior Civil Judge, Kakinada challenging the Decree and Judgment passed in O.S.No.303 of 2005, dated 25.10.2010 on the file of Principal Junior Civil Judge, Kakinada; It is also an undisputed fact that the appeal was 'Dismissed for default' on 03.10.2012 due to non-prosecution; to set-aside the same, the revision-petitioner filed I.A.No.121 of 2014 under Section 5 of the Act to condone the delay of 412 days; The cause submitted for delay is that he suffered from ill-health bedridden for a period of 16 months; The respondent No.4 disputed the truth of the cause and contended that the revision-petitioner produced a Medical Certificate with false information by managing the Doctor.

8. In this context, it is imperative to refer the proposition of law laid down by the Hon'ble Apex Court in **Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai**¹, wherein their Lordships at para-Nos.23 and 24 held as under:

"23. What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the

¹ (2012) 5 Supreme Court Cases 157.

Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on *bona fide* nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack *bona fides*, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

9. Hon’ble Supreme Court in **Sugandhi (Died) by LRs and others vs. P.Rajkumar²** and **Basawaraj and another vs. Special Land Acquisition Officer³** held that sufficient cause is distinct from good cause and sufficient cause be given liberal interpretation if negligence, inaction, or lack of *bonafides* cannot be imputed to the applicant.

10. It is also an established principle of law that if negligence, inaction, or lack of *bonafides* are made out and the cause pleaded

² (2020) 10 Supreme Court Cases 706.

³ 2013 (6) ALT (SC) 43 (D.B.).

by the petitioner is not established, the Court has no power to extend the limitation on equitable grounds.

11. In the revision-petition on hand, the learned First Appellate Judge, on facts categorically held that no medical record was produced by the revision-petitioner to establish that he suffered from serious ill-health during the period from 25.09.2012 to 30.05.2013. The Medical Certificate filed by the revision-petitioner, was disputed contending that it was obtained by managing the doctor.

12. When the opposite party disputed the truth and veracity of the cause pleaded by the petitioner, onus is on the petitioner to prove the cause. Then the question whether it is a sufficient cause would arise.

13. In the light of specific and clear finding of the learned First Appellate Judge that the cause of delay is not established and lacks *bonafides*, then it would be legitimate for the Court not to condone the delay. Otherwise, it would defeat the rights acquired by the other party. Hence, there is no illegality committed by the learned First Appellate Court.

14. Accordingly, Civil Revision Petition is 'Dismissed'. There shall be no order as to costs.

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

JUSTICE B.V.L.N. CHAKRAVARTHI

18th July 2023.

Note: LR Copy is to be marked.

B/o.
DNB