

HON'BLE SRI JUSTICE G. SHYAM PRASAD

CIVIL REVISION PETITION No.567 OF 2019

ORDER:-

This revision arises out of the order dated 12.09.2018 passed in I.A.No.13 of 2018 in O.S.No.5 of 2017 on the file of the learned Junior Civil Judge, Narasannapeta under Section 5 of Limitation Act, to condone the delay of 113 days in filing the petition to set aside the *ex parte* decree passed in 18.08.2017, which was dismissed without costs.

2. Aggrieved by the impugned order, the present revision petition is filed by the petitioners. Notices have been ordered to the respondent and have been served and none appears on behalf of the respondent.

3. The revision petitioners are the defendants in the suit in O.S.No.5 of 2017, filed for permanent injunction and the suit was decreed *ex parte*. The petitioners have filed I.A.No.13 of 2018, to condone the delay of 113 days in filing the petition to set aside the *ex parte* decree dated 18.08.2017, passed by the learned Junior Civil Judge, Narasannapeta. The order passed by the trial Court reveals that as the petitioners did not file the petition to condone the delay and also the petition to set aside *ex parte* decree within time and they did not state any sufficient cause for condoning the delay, the application was dismissed.

4. Learned counsel for the petitioners submits that due to the negligence on the part of the learned counsel, who appeared on behalf of the petitioners before lower Court, they could not appear before the trial Court and thereafter, the petitioners have got engaged another counsel, who filed the present application for setting aside the *ex parte* decree, passed against the petitioners. Therefore, the delay of 113 days is properly explained by the petitioners. Learned counsel for the petitioners therefore, sought for condoning the delay of 113 days in filing the petition which was not properly considered by the trial Court.

5. On consideration of submissions made by the learned counsel for the petitioners since the valuable rights of the parties are involved in the suit and it is obvious that an *ex parte* decree was passed by the trial Court, without giving any opportunity to the petitioners to contest the matter, and to the negligence on the part of the counsel for the petitioner, the petitioners could not prosecute their case, the petitioners cannot be penalized.

6. In view of the facts and circumstances of the case since the delay is not abnormal as it is only 113 days in filing the petition, the delay is condoned on payment of costs of Rs.2,000/- payable to the Legal Service Authority, within two (02) weeks from the date of receipt of a copy of this order. The petitioner may file fresh petition to set aside the *ex parte*

decree, and on consideration of the same on merits, the trial Court shall pass appropriate orders in accordance with law.

7. With these observations, the Civil Revision Petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall also stand closed.

G. SHYAM PRASAD,J

Date: 06.03.2020

Note:

Furnish CC by 13.03.2020.

B/o

RJS

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RJS