

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

I.A.NO.2 OF 2018
IN/AND
APPEAL SUIT NO.67 OF 2018

ORDER:-

This application is filed to condone the delay of 321 days in filing the appeal. The petitioner/appellant, who is the decree holder, states that he is aggrieved by the judgment and decree, dated.14-10-2016 passed in O.S.No.623 of 2009 on the file of the Court of IV Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar.

2. According to the decree holder, he is entitled a sum of Rs.32,82,308/- along with interest. He states that he is not satisfied with the judgment and decree and, therefore, he filed the present appeal. In para.4 of the affidavit, it is also mentioned that E.P.No.99 of 2017 was filed for execution of the said judgment and decree and that the respondents have paid a sum of Rs.19,08,675/-. Later, he states that he could not the file the appeal within the time and prays for condonation of delay of 321 days.

3. Counsel for the respondents appeared and filed a detailed counter and in that it is pointed out that the decree holder was actively pursuing the appeal and was appearing in the court. It is also pointed out that the full satisfaction was recorded of the entire judgment and decree and the

E.P was terminated on 14-07-2017. The learned counsel also pointed out that the delay is not at all satisfactorily explained and that no proper or sufficient explanation is given for condonation of delay. The learned counsel for the petitioner/decree holder then filed an additional affidavit stating that he received the amount in the E.P under protest. He also states that he was sick and advised to take bed rest. In proof of the same, he filed medical certificates dated.23-11-2016, 20-02-2017, 24-07-2017 and 05-11-2017 to justify his contention that he was not well. Both learned counsel argued in line with what the deponents have stated in the affidavits.

4. This court, after verifying the affidavits, notices that the full satisfaction of the decree was recorded by the court below on 14-07-2017 in E.P.No.99 of 2017. The said application was filed for arrest of the JDRs 1 and 2. The order of the court below passed on 14-07-2017 clearly denotes that the decree holder was present along with his counsel. The JDR 1 and 2 were also present. The decree holder's counsel filed a memo stating that he received a sum of Rs.19,08,675/- by way of an account payee cheque towards full satisfaction of the E.P claim. The court held as follows:- "Heard decree holder and learned counsel for decree holder who submitted that full satisfaction may be

recorded". Accordingly, the court recorded the full satisfaction of the E.P claim and E.P was terminated.

5. This court notices that despite the sickness of the deponent and the medical certificates dated.23-11-2016, 20-02-2017, 24-07-2017 and 05-11-2017, he was actively pursuing E.P in the lower court. He was infact present in person in the lower court on 14-07-2017 and his counsel filed a memo stating that the full satisfaction has to be recorded.

6. Learned counsel for the appellant also pointed out to the undated letter at page No.20 of the material papers filed along with appeal, which shows that he is prepared to receive the amount to be deposited under protest. A postal receipt is also filed at page No.21 showing that a letter was dispatched to the counsel.

7. Even though this letter is undated and even if the receipt is to be taken to be correct, in December,2016 the decree holder wanted to receive the amount under protest. When he appeared before the court, he clearly acknowledged through his counsel that full satisfaction may be recorded. Therefore, even if the contents of the letter are correct, this court is of the opinion that the subsequent conduct of the deponent disentitles him from relying on this letter. It is also noticed that the so-called sickness which is pleaded in the additional affidavit that is filed is not so

debilitating as to prevent the petitioner from attending to the court or from pursuing his appeal. There is only severe back pain, difficulty in walking and this shows that the sickness was only during the period November-2016 to November,2017. This by itself did not prevent the decree holder from attending the court or from contacting his counsel. As was reported by Hon'ble Supreme Court in ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Ors***⁽¹⁾ the Apex Court held that condonation of delay should be allowed in a pragmatic manner, but at the same time the increasing tendency to perceive delay as a non-serious matter and the non-challant manner which the affidavits are being filed requires to be curbed. Therefore, on an overall review of the entire facts and circumstances of the case and the law laid down by the Apex Court in ***Esha Bhattacharjee case(supra)*** this court is of the opinion that the applicant has not made out sufficient cause to condone the delay of 321 days in filing the present appeal. Accordingly, this application is dismissed.

Consequent of dismissing of this application, the Appeal Suit is rejected.

D.V.S.S.SOMAYAJULU,J

14-08-2018
TSNR

¹ 2014(1) ALD 21