

(1991) 04 AP CK 0004

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 841 of 1989

Gorripati Ekambaram Naidu and Others

APPELLANT

Vs

Pathipati Krishnaiah Naidu and Others

RESPONDENT

Date of Decision : 23-04-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9, 115

Citation : (1991) 2 ALT 483

Hon'ble Judges : Subhash Chhaganlal Pratap, C.J

Bench : Single Bench

Advocate : P.S. Narayana, for the Appellant; A. Bhaskara Chari, for the Respondent

Judgement

Subhas Chhaganlal Pratap, C.J

1. Refusal by the trial Court to condone two days delay in filing an application to set aside the Order of dismissal of the suit for default has resulted in this revision petition by the plaintiffs.

2. Hearing counsel on either side and going through the impugned order, it does appear that the plaintiffs were not diligent in prosecuting their suit. The question, however, ultimately boils down to whether there was sufficient cause for condonation of delay in filing the application in question. And on that ground the plaintiffs-must be held to have made out sufficient cause for condonation. That the plaintiffs previously were not diligen in prosecuting the suit proceedings can have but extremely limited relevance in consideration whether delay of bare two days should or should not be condoned. The trial Court has been carried away mostly by the previous conduct of the plaintiffs than by the paramount question whether the plaintiffs had or had not made out sufficient cause for condonation of two days delay.

3. After hearing counsel on either side, I am inclined to condone the delay of two days in question but on terms and conditions as per the final order below.

4. Hence Order :

(a) On the plaintiffs depositing in OS No. 758/1981 costs of Rs. 300/-latest by 12th June, 1991, the impugned order dated 30th December, 1988 stands set aside. The delay of two days in filing the application for setting the order of dismissal of the suit for default will stand condoned and the said application will then be hoard and decided on its own merits and in accordance with law.

(b) In the event, however, the plaintiffs commit default in depositing the aforesaid amount of Rs. 300/- latest by 12th June, 1991, the impugned order dated 30th December, 1988, shall stand confirmed.

(c) In the event of the plaintiffs depositing the aforesaid amount, liberty to the defendants to withdraw the same.

(d) Order accordingly on this petition which is thus disposed of.