
(2001) 09 AP CK 0137

In the Andhra Pradesh High Court

Case No : Civil Revision Petition 3213 of 1999

Shaik Osman

APPELLANT

Vs

Selection Grade Municipality and Another

RESPONDENT

Date of Decision : 14-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9
Limitation Act, 1963 — Section 5

Citation : (2001) 09 AP CK 0137

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Ramachandra Reddy, for the Appellant; Sai Gangadhar, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—This civil revision petition is directed against an order made in I.A. No. 347 of 1998 in O.S. No. 95 of 1994 on the file of the Principal Junior civil Judge, Warangal dated 8-12-1998.

2. The revision petitioner is the first plaintiff in the suit and an application has been filed by him under Sec. 5 of the Limitation Act 1963 to condone the delay of eleven days in filing an application under Or. IX Rule 9 C.P.C. for restoration of the suit dismissed for default on 11-2-1998. The suit was filed against the Municipality for not effecting mutation relating to a house. It is the case of the revision petitioner himself that he was suffering with cardiac problem on 11-2-1998 and as he was advised bed rest he could not attend the court on 11-2-1998 and hence the matter was not represented by his advocate who was engaged in District court and another junior advocate could not attend the court due to his marriage arrangements. Hence it is a fit matter where the delay has to be condoned. In para 2 of the impugned order several dates have been specified and taking the past conduct into consideration the court below felt that it is not a fit case where the delay has to be condoned. It was also recorded that no

explanation was given why the other plaintiff who is also competent to give evidence was also not present on the particular day and hence the court below held that there are no bona fides in making the application.

3. Sri Ramachandra Reddy, representing Narasimha Reddy learned counsel for the revision petitioner, had contended that the delay is only eleven days and proper explanation had been given why the revision petitioner plaintiff could not be present on the particular day and the plaintiff had also given reasons for filing an application for restoration of suit with a delay of eleven days.

4. Sri Sai Gangadhar representing the respondents had contended that the suit was filed by two plaintiffs and there is no explanation forthcoming by the second plaintiff who is also absent and in the absence of any cogent explanation and also in the absence of any material relating to sickness of the revision petitioner it cannot be said that the revision petitioner had established sufficient cause for condonation of delay.

5. Heard both the counsel

6. The delay is only eleven days. I had already expressed my opinion in several cases that, while dealing with applications u/s 5 of the Limitation Act, a distinction has to be drawn between ordinary delay and inordinate delay. Here is a case where the delay is only eleven days and further the suit is for the relief of mandatory injunction. In the fitness of things while exercising the discretion the court below should have given an opportunity to the revision petitioner to contest the matter since the decision on merits should be an ordinary rule and dismissal of matter for default should always be an exception. That being so, in my considered opinion, the dismissal of the application by the court below is not justified in the facts and circumstances of the case. However, in view of the peculiar facts, I deem it fit to set aside the impugned order on condition of the revision petitioner paying an amount of Rs. 250/- (two hundred and fifty) to Sri Sai Gangadhar, advocate within a period of six weeks failing which the impugned order stands.

7. Civil Revision Petition is allowed to the extent indicated above. No costs.