

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO. 947 OF 2013

ORDER:

This Revision is filed under Section 115 C.P.C challenging the order dated 26.11.2012 in I.A.No. 783 of 2008 in O.S.No. 30 of 2002 of the Additional Senior Civil Judge, Narasaraopet, Guntur District.

Petitioner herein is the defendant in the suit. The respondent filed the above suit for recovery of money against the petitioner on the basis of promissory note. Admittedly, the petitioner engaged an advocate and when the case was coming up for filing of written statement, the written statement was not filed and an exparte decree was passed on 3.4.2003.

On 17.7.2008 the petitioner filed I.A.No. 783 of 2008 under Section 5 of Limitation Act to condone the delay of 1905 days in filing petition to set aside the exparte decree. In the said application, the petitioner contended that he was suffering with kidney trouble and got admitted in Lalita Super Speciality Hospital, Guntur for treatment. He also stated that prior thereto, he also underwent treatment at Aswani Hospitals at Mangalagiri Road, Guntur; that he spent Rs. 2,00,000/- for his treatment; and also underwent operation for kidney transplantation. He claimed that he could not contact his advocate and he did not receive any information about the proceedings of the case from the advocate.

Respondent filed counter affidavit opposing the condonation of delay. He contended that the affidavit filed by the petitioner did not disclose when the petitioner was admitted in the hospital for treatment, when he was discharged and how many days he was bedridden etc. He further contended that the petitioner filed this application without any bonafide grounds for condonation of delay and it is liable to be dismissed.

By order dated 26.11.2012 the Court below dismissed I.A.No. 783 of 2008. It held that except his self-serving testimony and Ex.P-1 medical prescriptions, he did not file any other evidence to support his plea for condonation of abnormal delay of 1905 days in filing this petition. It held that Ex. P1 showed that he was admitted in Lalita Super Speciality Hospital, Guntur on 19.4.2005 and he was discharged on 21.4.2005 after treatment of three days; that it did not disclose that he underwent any surgery for kidney transplant; that it only showed a reference of the petitioner to the Government General Hospital at Guntur for further treatment. It held that there is no evidence to show that he underwent any kidney transplantation in any hospital as alleged by him. It also pointed out that name mentioned in Ex.P-1 is “ K. Anjaiah” while the petitioner’s name is “K. Anjaneyulu”. It doubted whether the said Ex. P-1 related to petitioner at all. It pointed out that since the suit was pending till 2003, there is nothing to show that the petitioner had any illness at any time prior to the decree in the suit and that the alleged illness is a subsequent event even according to him. It further held that there is no material placed before the Court to show that the petitioner was unable to attend the Court or that he was unable to contact his advocate or unable to send any family members to contact his advocate to know about the suit proceedings.

Questioning the same, this Civil Revision is filed.

Counsel for the petitioner would submit that the Court below had erred in refusing to condone the delay of 1905 days in filing the application under Order 9 Rule 13 C.P.C and that in the facts and circumstances of the case, it could have accepted the oral testimony of PW-1 and Ex.P-1 and condoned the delay.

Admittedly, the suit was filed in the year 2002 by the respondent for recovery of money on the basis of promissory note against the petitioner. Petitioner engaged an advocate but did not file written statement because of which suit decreed ex-parte on 3.4.2003. It is the duty of the petitioner to be in touch with the advocate and give

instructions so that written statement could have been filed on his behalf. The plea of the petitioner that he suffered from kidney trouble and underwent kidney transplant operation is not supported by evidence on record except his self-serving testimony. Ex.P-1 filed by the petitioner mentions the patient name as K. Anjaiah while the petitioner's name is K. Anjaneyulu and it also shows that the patient was admitted in Lalita Super Speciality Hospital, Guntur only for three days, that too in the year 2005. No evidence is placed by the petitioner to prove his alleged illness prior to the passing of ex parte decree. In this view of the matter, I am of the opinion that the Court below has rightly not accepted the explanation furnished by the petitioner for condonation of the inordinately long delay of 1905 days in filing the petition to set aside the ex-parte decree.

Therefore, I do not find any merit in the Civil Revision Petition.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01.06.2015

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