

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.4634 of 2013

ORDER:

Heard Sri R.K.Suri, learned counsel for the petitioner. None appears for the respondent.

2. This Revision Petition is filed challenging the order dt.28-08-2013 in I.A.No.634 of 2012 in O.S.No.2439 of 2008 of the Principal Senior Civil Judge, Ranga Reddy District.

3. Petitioner herein is the defendant in the said suit. Respondent/plaintiff filed the above suit for recovery of money against the petitioner on the basis of a promissory note allegedly executed by the petitioner in her favour.

4. Written Statement was filed by the petitioner disputing the suit claim.

5. Issues were framed and trial commenced. P.W.1 was examined in chief and the matter was posted for cross examination of P.W.1. Since the petitioner or his counsel were not present, the petitioner was *ex parte* and an *ex parte* decree was passed on 16-11-2010.

6. Thereafter, on 02-04-2012, the petitioner filed I.A.No.634 of 2012 under Section 5 of the Limitation

Act, 1963 to condone the delay of 206 days in filing petition to set aside the *ex parte* decree dt.16-11-2010.

7. In the affidavit filed in support of this application, he stated that although the Advocate had informed him about the matter coming up for hearing on 16-11-2010, he suffered accident i.e. fall in the bathroom and so he could not contact his advocate because of which, the *ex parte* decree came to be passed on 16-11-2010. He contended that his wife was a diabetic patient and had developed suddenly certain complications due to uncontrolled blood sugar levels, that he was taking her to hospital and therefore could not contact his Advocate and give clarification to conduct cross examination of P.W.1. He claimed that he was under impression that his counsel will handle the matter without his presence and so he did not contact his counsel and did not give instructions to cross examine P.W.1. He claimed that he fell in the bathroom on 25-08-2011 and was advised complete bed rest for four months and he was in a position to walk only during December 2011. He claimed that he was asked not to travel alone for long distance by either bus or auto and that he is a resident of Kukatpally while his advocate is having office at Marredpally. It is contended that he had a strong case on merits and therefore, opportunity be given to him to cross examine P.W.1 by condoning the delay in seeking to set aside the *ex parte* decree and also by setting aside the *ex parte* decree.

8. Counter affidavit was filed by the learned counsel for the respondent-plaintiff opposing the condonation of delay.

9. In the counter affidavit filed, the respondent contended that the docket of the Court below would indicate that adequate time was given to the petitioner to cross examine P.W.1 and finally the matter was posted for that purpose on 16-11-2010 with costs. She contended that in spite of several adjournments being given to the petitioner for the purpose of cross examination of P.W.1, he had not chosen to cross examine P.W.1 and therefore it forfeited his right to cross examine P.W.1 and passed the judgment and decree on merits. It was pointed out that no document such as admission card, discharge summary or case sheet were filed by the petitioner to show *bona fides* and prove his alleged ill health and accident; and even otherwise he could have sent his children to his advocate office or instructed advocate through telephone. It was contended that it was duty of the petitioner to follow up each and every adjournment of the case but he did not do so that the allegation about the illness of his wife was a false allegation and that no document had been filed to show that she was ill.

10. By order dt.28-08-2013, the Court below dismissed I.A. It held that the petitioner had filed a Certificate dt.20-12-2011 issued by People's Hospital stating that he was examined by Dr.B.Prathap Reddy and

found that the accused suffered low B.P. from 28-05-2011 for four months but since the suit had been decreed long prior there to on 16-11-2010, the petitioner cannot be said to have acted diligently in the matter. It also held that the contention of the petitioner that he fell in the bathroom on 25-08-2011 and suffered injuries is not supported by any medical certificate and that as per the Medical Certificate, the doctor examined the petitioner on 20-12-2011.

11. Challenging the same, this Civil Revision Petition is filed.

12. Learned counsel for the petitioner contended that the petitioner had shown sufficient cause for condoning the delay of 206 days in filing the petition to set aside the *ex parte* decree; that petitioner had pleaded his own illness and accident in the bathroom apart from his wife's illness; and therefore the Court below should have accepted the same to condone the delay of 206 days to set aside the *ex parte* decree.

13. Facts narrated above indicate that the suit was filed for recovery of money against the petitioner by the respondent on the basis of a promissory note. After chief examination of P.W.1 was concluded, matter was posted for cross examination of P.W.1 on several dates. But the petitioner or his counsel did not cross examine P.W.1. Therefore, *ex parte* decree was passed on 16-11-2010. The application to set aside the *ex parte* decree

was filed on 02-04-2012 with an application I.A.No.634 of 2012 to condone delay of 206 days in seeking to set aside the *ex parte* decree.

14. Even according to the affidavit filed by the petitioner in support of I.A.No.634 of 2012, the accidental fall in the bathroom occurred allegedly on 25-08-2011, nine months after the *ex parte* decree was passed. In any event, he had not filed any document to show that he suffered any serious injury on account of said fall and had to have complete bed rest. Low B.P. is not a disease and can be medically treated and the petitioner cannot claim that he was prevented from contacting his advocate either by post or by telephone from 25-08-2011 to 02-04-2012 on this ground. Even otherwise for the period between 16-11-2010 and 25-08-2011, there is no explanation from the petitioner for his inaction. There is also no evidence adduced by the petitioner regarding the alleged illness of his wife either.

15. Therefore, I am of the considered opinion that the petitioner had not made out sufficient case for condoning the delay of 206 days in filing the petition to set aside the *ex parte* decree and he was clearly negligent in defending the suit and his explanation for condonation of delay is not *bona fide*.

16. In this view of the matter, I do not find any merit in the Civil Revision Petition and the same is

accordingly dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 29-06-2015

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