

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

-

CIVIL REVISION PETITION No.905 of 2015

ORDER:

Heard the learned counsel for petitioner. Though the notice could not be served on the respondent, the counsel for the respondent was served and none appeared for the respondent.

2. The petitioner herein, who is aged about 70 years, is defendant in O.S.No.71 of 2014 on the file of the Court of the Senior Civil Judge, Kadiri. The respondent herein filed the said suit for recovery of an amount of Rs.75,000/- along with interest based on a promissory note. The suit was posted to 25.09.2014 for filing written statement, and when no written statement was filed on that day, an order was passed on 25.09.2014 forfeiting the right of the defendant to file the written statement. The petitioner filed I.A.No.334 of 2014 for setting aside the order dated 25.09.2014 stating that he was suffering from paralysis and old age infirmities and he could not file the written statement on that day. However, the petitioner filed the written statement along with the said application. The trial Court dismissed the said application observing as follows:

“6. To succeed in an instant petition, it is incumbent on the part of the petitioner to assign good cause for his previous non-appearance. In the sense the relevant day, on which the petitioner called absent and remained *ex parte*. When it is the case of the petitioner that he suffered paralysis and that could not meet his counsel on the relevant day is it not the duty of the petitioner to produce a medical record thereto? At no stretch, it can be said that, only because he took country medicine the treatment is off the records. Even a quack doctor prescribes the medication. The way in which petitioner failed to file a paper to convince the Court as to his alleged ill health on the relevant day, shows the falsity of the case. Even otherwise, leave apart the relevant date, what happened on the earlier dates on which the counsel took time on behalf of the petitioner to file written statement? The petitioner owe an explanation. He failed. Amidst all these aspects the court could not see a good cause to consider the case of the petitioner. Hence, the point is answered against the petitioner and in favour of the respondent.”

3. In a suit for recovery of amount, for the absence of the defendant to file written statement on a day fixed, though his right to file written statement was forfeited, when an application was filed within one month thereof, the trial Court should have been liberal by imposing some costs. It is not a case where the defendant had not filed written statement along with the application. The written statement was filed along with the application.

4. In the circumstances, the impugned order of the trial Court dated 20.01.2015 in I.A.No.334 of 2014 is set aside and I.A.No.334 of 2014 is allowed on payment of costs of Rs.1,000/- to the plaintiff. The Civil Revision Petition is, accordingly, allowed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 20.11.2015

TJMR