

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.3858 of 2012

ORDER :

Heard Sri A.K. Jayaprakash Rao, counsel for petitioner and Sri K.V.R. Krishna Sharma, counsel for 1st respondent.

2. The petitioner herein is a third-party to the suit O.S.No.1211 of 2006 filed by 1st respondent herein against respondent nos.2 and 3 for specific performance of an agreement of sale.

3. The petitioner herein filed I.A.No.1234 of 2007 to re-open the suit which was dismissed for default on 31.03.2011. The petitioner then filed I.A.No.261 of 2011 under Section 5 of Limitation Act, 1963 to condone the delay of (19) days in filing the petition under Order 9 Rule 9 CPC to set aside the said order along with an separate application under Order 9 Rule 9 CPC. In the affidavit filed in support of this application it is stated that petitioner had gone to Khammam for his daughter's treatment and so he could not contact his counsel and instruct him to file a restoration petition.

4. Counter-affidavit was filed by 1st respondent opposing the condonation of delay.

5. By order dt.25.07.2012, the Court below dismissed the said application. It noticed that petitioner had filed I.A.No.1234 of 2007 under Section 151 CPC to re-open the suit; that the said I.A.No.1234 of 2007 was dismissed for default on 31.03.2011; and the present petition was filed on 13.06.2011, i.e., more than (70) days and so the plea of (19) days delay is not correct. It accepted the plea of plaintiff that the delay was deliberate and therefore is not liable to be condoned.

6. Heard both sides.

7. Assuming for the sake of argument that the delay is not (19) days as pleaded by petitioner and is about (70) days, it is to be borne in mind that the application I.A.No.1234 of 2007 was dismissed for default on 31.03.2011. From 01.05.2011 till 31.05.2011, the Court would be closed for Summer Vacation. The application under Order 9 Rule 9 CPC was filed on 13.06.2011. Therefore, it cannot be said that there was an undue delay or negligence on the part of petitioner in filing the application to restore I.A.No.1234 of 2007. Therefore, the order dt.25.07.2012 in I.A.No.261 of 2011 in O.S.No.1211 of 2006 is set aside; the said I.A. is allowed and the delay of (70) days in filing the petition under Order 9 Rule 9 CPC to set aside the order of dismissal of I.A.No.1234 of 2007 is condoned and the said I.A.No.1234 of 2007 is restored to the file of the Court.

8. Accordingly, the Civil Revision Petition is allowed subject to condition that petitioner deposits costs of Rs.300/- payable to 1st respondent/plaintiff to the credit of the suit within four (04) weeks from the date of receipt of a copy of this order. On such deposit, the 1st respondent is entitled to withdraw the same without furnishing any security. If such costs are not deposited, the Civil Revision Petition shall stand dismissed.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-06-2015

Ndr/*