

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

CIVIL REVISION PETITION No.3349 of 2014

ORDER:

This Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 30.10.2012 in I.A.No.828 of 2011 in O.P.No.723 of 2011 of the III Additional District Judge, Karimnagar.

2. The petitioner herein suffered injuries in an accident involving a vehicle owned by the 1st respondent which was insured with the 2nd respondent. He therefore filed the O.P. seeking compensation from both respondents 1 and 2. Process was not paid by the counsel for the petitioner in the said O.P. to 1st respondent. Therefore, the O.P. was dismissed as against 1st respondent for default on 22.06.2010.

3. On 23.08.2011, i.e., 617 days later, the petitioner has filed I.A.No.828 of 2011 under Section 5 of the Limitation Act, 1963 to condone the said period of delay. In the affidavit filed in support of the I.A, it is stated by the petitioner's guardian that counsel for the petitioner was engaged in another Court when the case was called; he could not deposit the process for 1st respondent; that the Court called the case and dismissed the same against 1st respondent on account of non-payment of process. The petitioner's guardian stated that he could not filed restoration petition due to his ill health and therefore there was delay of 617 days in filing the application for restoration.

4. In this I.A.No.828 of 2011 also no notice was taken to 1st respondent. The Court below by order dated 30.10.2012 dismissed the said I.A stating that the petitioner wants to protract the litigation without following due process of law and without giving opportunity to 1st respondent to contest the O.P.

5. Challenging the same this Revision is filed.

6. Learned counsel for the petitioner contends that notice to the respondents has been served by publication in "Namasthe Telangana" Telugu Daily Newspaper, Warangal Edition; nobody is representing respondents 1 and 2; therefore, taking sympathetic view of the matter, this Revision be allowed and delay of 617 days in filing the application seeking to set aside the order dated 22.06.2010 dismissing the O.P. for default against the 1st respondent for non-payment of process, be condoned.

7. I am unable to agree with the said submission. When the petitioner is seeking the relief against both the respondents it is incumbent on the petitioner or his counsel to deposit process for both, in the trial Court. On account of failure of the petitioner and his counsel to do so, the O.P. was dismissed against the 1st respondent for default on 22.06.2010. Although, the petitioner filed I.A.No.828 of 2011 to set aside the said order, even in the said application no notice is taken to the 1st respondent by the petitioner. The reason given by the petitioner that his counsel was engaged in another Court and therefore could not deposit the process for the 1st respondent cannot be accepted, because the process can be deposited not only by the petitioner's counsel but also by his clerk or junior advocate. No evidence is filed as to the alleged ill-health of the petitioner warranting condonation of delay of 617 days in filing the petition under Order 9 Rule 13 C.P.C. as against the 1st respondent.

In this view of the matter, I am of the opinion that the Court below is right in dismissing I.A.No.828 of 2011 on the ground that the petitioner wants to protract the litigation without following due process of law and without giving opportunity to the 1st respondent to contest the O.P. Therefore, I do not find any merit in the Revision.

Accordingly, the Civil Revision Petition is dismissed. No order as to costs. As a sequel, miscellaneous petitions, if any, shall stand closed.

24th June, 2015
Js.

M.S. RAMACHANDRA RAO,J.