

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4880 of 2010

ORDER :

This Revision is filed challenging the order dt.28.06.2010 in I.A.No.714 of 2009 in O.S.No.307 of 2007 on the file of the Senior Civil Judge, Khammam.

2. The petitioner herein is the plaintiff in the above suit.

3. He filed the suit against respondent for specific performance of an agreement of sale. Summons in the suit were served. Thereafter, time was granted to file written statement. As a last chance, on payment of costs of Rs.100/-, the matter was posted to 26.06.2008 for filing written statement. On that day, costs were not paid and written statement was not filed. So the respondent was set *ex parte* on 24.07.2008, and an *ex parte* decree was passed on that day.

4. On 05.05.2009, the respondent filed I.A.No.714 of 2009 under Section 5 of the Limitation Act, 1963 to condone the delay of (310) days in filing the application to set aside the *ex parte* decree passed on 24.07.2008 in the suit.

5. In the affidavit filed in support of the said

application, he contended that he suffered from “*Squamous Cell Carcinoma of Penis*” and underwent treatment from 26.06.2008 to 28.04.2009, that he was advised complete bed rest and, so could not appear on 24.07.2008 and the *ex parte* decree passed on 24.07.2008. He prayed that it be set aside. He filed two medical certificates issued by Dr. B. Jaya Rao, Civil Assistant Surgeon, Government Hospital, Khammam dt.06.12.2008 and 28.04.2009.

6. This application was opposed by the other side contending that in spite of giving several opportunities, the respondent had not filed written statement and was consequently set *ex parte* and an *ex parte* decree was passed; that the medical certificates filed by respondent cannot be accepted because the respondent ought to have got treated by a cancer specialist and not by an E.N.T. Specialist or a Surgeon; that respondent had managed to get these certificates and the same cannot be accepted in the absence of any material before the Court to show that he had undergone radiation treatment, etc.

7. By order dt.28.06.2010, the Court below allowed I.A.No.714 of 2009. It held that the reasons assigned in the affidavit filed by respondent are convincing and the respondent should be given one more opportunity to defend the suit. It also held that although the respondent has not filed two applications - one under Section 5 of

Limitation Act, 1963 and another under Order 9 Rule 13 C.P.C., still, on condition of respondent paying Rs.1,000/- to petitioner on or before 19.07.2010, the I.A. can be allowed while granting time to respondent to file a petition under Order 9 Rule 13 C.P.C. after paying costs. In default it directed that the I.A.No.714 of 2009 shall stand dismissed.

8. Heard Sri J. Prabhakar, counsel for petitioner; and Sri M.V.S. Suresh Kumar, counsel for respondent.

9. The counsel for petitioner states that the Court below erred in allowing I.A.No.714 of 2009 and it should have dismissed it disbelieving the two medical certificates filed by respondent; that two separate applications ought to have been filed - one under Section 5 of the Limitation Act, 1963 and the other under Order 9 Rule 13 C.P.C.; and since the application under Order 9 Rule 13 C.P.C. was not filed, the Court below ought not to have permitted the respondent to file such an application.

10. The counsel for respondent, on the other hand, contended that the order passed by the Court below is correct and the Court below had correctly exercised its discretion under Section 5 of the Limitation Act, 1963, condoned the delay of (310) days in filing the petition and set aside the *ex parte* decree passed on 24.07.2008.

11. It is no doubt true that respondent suffered an *ex*

parte decree on 24.07.2008 in a suit for specific performance of an agreement of sale relating to immovable property. Therefore substantial stakes of the parties are involved in the suit. It is the case of respondent that he was suffering from cancer and he had underwent treatment from 26.06.2008 to 28.04.2009, in support of which he had filed two medical certificates issued by Civil Assistant Surgeon, Government Hospital, Khammam.

12. Although the counsel for petitioner contended that the Doctor who issued the certificates was not competent to treat cancer, even if this plea is true, it does not mean that the said Doctor, being a Government servant, was not competent to certify that the respondent was suffering from cancer. Therefore, I am of the opinion that there is no reason to disbelieve the medical certificates produced by respondent. In any event, the petitioner has been adequately compensated by way of costs of Rs.1,000/-. Therefore, I do not find any merit in the Revision and the same is accordingly dismissed.

13. Time is granted to respondent to deposit the costs payable to petitioner within four (04) weeks from the date of receipt of a copy of this order, if not already deposited, and also to file an application under Order 9 Rule 13 C.P.C. within this time if not already filed. If these conditions are not fulfilled, then the order dt.28.06.2010 in

I.A.No.714 of 2009 in O.S.No.307 of 2007 on the file of the Senior Civil Judge, Khammam shall stand set aside, and the said I.A. shall stand dismissed.

14. If the respondent complies with the condition of deposit of Rs.1,000/- within one (01) month from to-day, the petitioner shall be entitled to withdraw the same without furnishing any security.

15. Since the suit is of the year 2007, the Court below shall endeavour to dispose of the suit as early as possible, within a period of six (06) months from the date of receipt of a copy of this order.

16. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 17-06-2015

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