

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

C.R.P.No.203 of 2015

ORDER:

Heard Sri V.S.R.Anjaneyulu, learned counsel for the petitioner and T.S. Anand, learned counsel for the respondents.

2. This Revision Petition is filed challenging the Order
dt.04-09-2014 in I.A.No.650 of 2013 in O.S.No.746 of 2012 of the I Additional Senior Civil Judge, Warangal.

3. Petitioner herein is the defendant in the suit. The respondent-plaintiff filed the above suit for specific performance of an agreement of sale against the petitioner. The matter was posted to
22-01-2013 for filing of written statement by the petitioner. On that day, there was no representation by the petitioner or his counsel. So the Court below passed orders setting the petitioner *ex parte*.

4. On 27-02-2013, the petitioner filed I.A.No.650 of 2013 under Order IX Rule 7 CPC contending that she was suffering from viral fever on that day and therefore, she could not attend before the Court; that her counsel was engaged in another Court and also could not represent the matter when it was called; the non-appearance of the petitioner and her counsel on that

day was not an intentional; and therefore, the Order dt.22-01-2013 be set aside.

5. The respondents filed a counter opposing this application. They contended that suit was filed on 05-09-2012; written statement ought to have been filed therein by 04-12-2012; petitioner was rightly set *ex parte* on 22-01-2013; the application under Order IX Rule 7 CPC was filed on 27-02-2013 without filing the written statement along with it. They contended that this application is filed only to protract the litigation and to avoid the liability. They also contended that there was no doctor certificate filed in support of the plea of illness of the petitioner.

6. By order dt.04-09-2014, the Court below dismissed I.A.No.650 of 2013. It held that the petitioner failed to file any evidence to show that she was suffering from viral fever at the given point of time; she did not also file any sworn in affidavit of her counsel that he was engaged in another Court on 22-01-2013; and that she did not file written statement along with application to show her *bona fides*.

7. Questioning the same, this Revision Petition is filed.

8. Learned counsel for the petitioner contended that the petitioner was prevented by sufficient cause from appearing before the Court on 22-01-2013 on

account of the fact that she was suffering from viral fever and counsel also could not represent the matter because he was engaged in another Court at that time. He stated that the written statement is ready and that the petitioner, if she is given an opportunity to file the same, would immediately file it.

9. Learned counsel for the respondents on the other hand refuted the contentions of the learned counsel for the petitioner and supported the order passed by the Court below.

10. The subject matter of the suit is a building in respect of which relief of specific performance has been claimed by the respondents against the petitioner. Therefore substantial stakes are involved in the suit. Merely because the petitioner was not able to file documentary evidence to prove her illness i.e. viral fever on 22-01-2013 and merely because her counsel did not appear on that day, because he was held up in another Court, the Court below ought not to have refused to set aside the order dt.22-01-2013 setting the petitioner *ex parte*.

11. Since written statement, according to the petitioner, is ready, in the interest of justice, the order dt.04-09-2014 in I.A.No.650 of 2013 is set aside and the said I.A. is allowed on the condition of petitioner

depositing costs of Rs.1,000/- (Rupees One Thousand only) to the credit of the suit within two weeks from the date of receipt of a copy of this order and the petitioner filing written statement in the Court below within the said period after serving the same on the respondents. The respondents are permitted to withdraw the amount deposited by the petitioner without furnishing any security. In default of compliance the above conditions, the Civil Revision Petition shall stand dismissed.

12. With the above directions, the Civil Revision Petition is disposed of with costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 15-06-2015

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