

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

C.R.P.No.2842 of 2014

ORDER:

This Revision Petition is filed challenging the judgment

dt.17-07-2014 in I.A.No.159 of 2011 in O.S.No.71 of 2008 of the Senior Civil Judge, Piler.

2. Petitioner herein is the defendant in the said suit filed by the respondent for recovery of amount on the basis of a promissory note. Summons in the suit were served on the petitioner. He engaged a Senior Advocate by name Sri B.Racharayudu and the said advocate filed vakalat on behalf of petitioner on 29-08-2008. The matter was posted for filing of written statement by the petitioner. No written statement was filed and the suit was decreed *ex parte* on 29-12-2008.

3. On 16-02-2011, the petitioner filed I.A.No.159 of 2011 under Section 5 of the Limitation Act, 1963 to condone the delay of 751 days in filing the petition under Order IX Rule 13 CPC and also another application under Order IX Rule 13 CPC.

4. In the affidavit filed in support of this application, the petitioner stated that the counsel engaged by him fell ill in the last week of September 2008 and died

subsequently; and therefore, no written statement was filed on behalf of the petitioner resulting the suit being decreed *ex parte*. He also stated that he had good grounds to contest the suit and so the delay of 751 days in filing the petition under Order 9 Rule 13 CPC be condoned. The petitioner also contended that only after receiving notice in the E.P., he came to know about decree in the suit.

5. Counter affidavit was filed by the respondent opposing the condonation of delay. The respondent contended that the petitioner invented these allegations for filing the application without any proof; that the petitioner was aware of the decree but still kept quiet with a view to delay the recovery of money; and in the absence of any valid reason to condone the delay, this application may be dismissed.

6. By order dt.17-07-2014, I.A.No.159 of 2011 was dismissed. It recorded that petitioner engaged this counsel on 29-08-2008 and requested time for filing written statement i.e. four months' time and thereafter he did not file any written statement. It also held that the vakalat filed by the petitioner indicates that he engaged not only one advocate but three advocates and even if one of the advocates engaged by him died, the other two advocates who were on record could have been approached by the

petitioner to file written statement in time by giving necessary instructions. Therefore, it held that the petitioner had failed to show sufficient cause for condonation of the inordinately long delay of 751 days to file application under Order 9 Rule 13 CPC.

7. Challenging the same, this Revision Petition has been filed.

8. Learned counsel for the petitioner contends that the Court below had erred in dismissing the said I.A.; that it should have condoned the delay in filing the application under Order 9 Rule 13 CPC having regard to the death of the advocate engaged by the petitioner; that the petitioner had a very good defence in the suit since the petitioner had discharged the liability totally; and the petitioner has evidence in proof of the said discharge of liability to the respondent. He therefore contended that impugned order be set aside and the Revision Petition be allowed.

9. Learned counsel for the respondent on the other hand refuted the above contentions and stated that the petitioner was lacking in *bona fides*; the petitioner was living only a short distance away from the Piler where the suit was pending; nothing prevented the petitioner from ascertaining the events in the suit either on telephone or by post from one of the two advocates engaged by him; and since the petitioner had been negligent in that regard,

the delay in filing the application under Order 9 Rule 13 CPC is not liable to be condoned.

10. Learned counsel for the petitioner had not disputed the fact that vakalat filed by the petitioner in the suit on 29-08-2008 disclosed that the petitioner has engaged three advocates 1) Sri Racha Rayudu 2) Sri Muneer Bee and 3) Sri Jaya Sekhar. After the petitioner had engaged them, time was requested time till 29-12-2008 for filing written statement, but no written statement was filed by the petitioner. No material is placed before the trial Court that Sri Racha Rayudu, advocate, died in the meantime. The suit was decreed *ex parte* on 29-12-2008. The petitioner is an employee working in Madanapalle town which is only a short distance away from Piler where the suit was pending. He is not an illiterate person. It was his duty to keep in touch with the advocates engaged by him to ascertain the events which transpire in the suit. It appears that he did not bother to contact the advocates engaged by him either on phone or by post or personally. He was thus negligent.

11. Therefore, merely because one counsel engaged by the petitioner had died, no indulgence can be shown to the petitioner particularly when for a period of 751 days, he took no interest in the suit proceedings filed against him. I am therefore of the opinion that the Court

below was right in dismissing I.A.No.159 of 2011.

12. I therefore do not find any merit in the Revision Petition and the same is accordingly dismissed.
No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-06-2015

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