

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No. 3862 of 2010

ORDER:

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This Revision is filed challenging the order dt.27.07.2010 in I.A.No.36 of 2010 in O.S.No.38 of 2004 on the file of the Junior Civil Judge, Pargi, Ranga Reddy District.

2. The petitioners herein are the plaintiffs in the above suit. The suit was dismissed for default on 24-11-2009.

3. On 11-02-2010, the petitioners filed I.A.No.36 of 2010 under Section 5 of the Limitation Act to condone the delay of 50 days in filing the restoration petition under Order IX Rule 9 of CPC and to restore the suit.

4. In the affidavit filed in support of that application, it is stated that the 1st petitioner suffered ill-health and had also undergone some operation. It is further stated that the son of the 1st petitioner died a year back. Apart from that, it is also stated that the other petitioners are staying at Hyderabad for their livelihood and that the petitioners, therefore, could not contact their counsel and only three days prior to filing of the I.A., they came to know about the fact that the suit was dismissed for default.

5. A counter affidavit was filed by the respondents opposing

the condonation of delay pointing out that the petitioners were lethargic in prosecuting the case and did not attend the court though many adjournments were given. It is also stated that no medical certificate is filed to prove the illness suffered by the 1st petitioner.

6. By order dt.27-07-2010, the court below allowed the said application accepting the reasons given by the petitioners seeking condonation of delay.

7. Challenging the same, this Revision is filed.

8. Counsel for the petitioners submits that the court below ought not to have allowed the said application in the absence of any material to prove the illness of the 1st petitioner. He further contended that even according to the respondents, the son of the 1st respondent had died a year back. Since the respondents had been negligent in conducting proceedings in the suit, the court below ought not to have condoned the delay.

9. Counsel for the respondents, on the other hand, contends that the court below has rightly condoned the delay of 50 days in filing the restoration petition and this Court, in exercise of its power under Article 227 of the Constitution of India, need not interfere with the said order, since the stakes in the suit are substantial.

10. Admittedly, the suit was filed for perpetual injunction by

the respondents against the petitioners in respect of an extent of 14-33 gts. in Sy.No.262 of Manchanpally village, Pudur Mandal, Ranga Reddy District. The suit was admittedly dismissed for default on 24-11-2009. The application for restoring the suit under Order IX Rule 9 CPC was filed by the respondents on 11-02-2010, 50 days after dismissal of the suit. Having regard to the fact that the stakes in the suit are substantial and the delay in filing the application under Order IX Rule 9 CPC is not unreasonable, even though the explanation of the respondents is not very satisfactory, I am of the opinion that the court below is right in condoning the delay of 50 days in filing the restoration petition under Order IX Rule 9 CPC. However, I am of the opinion that the court below ought to have awarded costs to be paid by the respondents to the petitioners.

11. Therefore, the Civil Revision Petition is disposed of with a direction to the respondents to pay costs of Rs.500/- (Rupees five hundred only) to the petitioners and also subject to the condition that the respondents shall cooperate in the disposal of the suit without taking unnecessary adjournments. The court below shall dispose of the suit within a period of six months from the date of receipt of a copy of this order and incase the respondents do not cooperate for its disposal, it is open to the court below to pass orders ex-parte also. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

Date:11-06-2015

Prv