

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**CRP.No.3857 of 2012**

**ORDER :**

Heard Sri A.K. Jayaprakash Rao, counsel for petitioner and Sri C. Hari Preeth, counsel for respondent.

**2.** The petitioner herein is a third-party to the suit filed by 1<sup>st</sup> respondent herein against respondent nos.2 and 3 for specific performance of an agreement of sale.

**3.** The petitioner herein filed I.A.No.1233 of 2007 to implead him as 3<sup>rd</sup> defendant in the suit which was dismissed for default on 31.03.2011. The petitioner then filed I.A.No.263 of 2011 under Section 5 of Limitation Act, 1963 to condone the delay of (19) days in filing the petition under Order 9 Rule 9 CPC to set aside the said order along with an separate application under Order 9 Rule 9 CPC. In the affidavit filed in support of this application it is stated that petitioner had gone to Khammam for his daughter's treatment and so he could not contact his counsel and instruct him to file a restoration petition.

**4.** Counter-affidavit was filed by 1<sup>st</sup> respondent opposing the condonation of delay.

**5.** By order dt.25.07.2012, the Court below

dismissed the said application. It noticed that petitioner had filed I.A.No.1233 of 2007 under Order 1 Rule 10(2) C.P.C. to re-open the suit and permit the petitioner to implead her as 3<sup>rd</sup> defendant in the suit; that the said I.A.No.1233 of 2007 was dismissed for default on 31.03.2011; and the present petition was filed on 13.06.2011, i.e., more than (70) days and so the plea of (19) days delay, is not correct. It accepted the plea of 1<sup>st</sup> respondent/plaintiff that the delay was deliberate and therefore is not liable to be condoned.

**6.** Heard both sides.

**7.** Assuming for the sake of argument that the delay is not (19) days as pleaded by petitioner and is about (70) days, it has to be borne in mind that the application I.A.No.1233 of 2007 was dismissed for default on 31.03.2011. From 01.05.2011 till 31.05.2011, the Court would be closed for Summer Vacation. The application under Order 9 Rule 9 CPC was filed on 13.06.2011. Therefore, it cannot be said that there was an undue delay or negligence on the part of petitioner in filing the application to restore I.A.No.1233 of 2007.

**8.** Therefore, the order dt.25.07.2012 in I.A.No.263 of 2011 in O.S.No.1211 of 2006 is set aside; the said I.A. is allowed and the delay of (70) days in filing the petition under Order 9 Rule 9 CPC to set aside the order of

dismissal of I.A.No.1233 of 2007 is condoned subject to payment of costs of Rs.300/-; and the said I.A.No.1233 of 2007 is restored to the file of the Court.

**9.** Accordingly, the Civil Revision Petition is allowed subject to condition that petitioner deposits costs of Rs.300/- payable to 1<sup>st</sup> respondent/plaintiff to the credit of the suit within four (04) weeks from the date of receipt of a copy of this order. On such deposit, the 1<sup>st</sup> respondent is entitled to withdraw the same without furnishing any security. If such costs are not deposited, the Civil Revision Petition shall stand dismissed.

**10.** As a sequel, miscellaneous petitions pending, if any, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 04-06-2015

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