

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.3265 of 2015

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging order dt.20.07.2015 in I.A.No.405 of 2015 in O.S.No.541 of 2008 on the file of I Additional Senior Civil Judge, Warangal, (for short 'the impugned order').

2. The petitioners herein are defendant nos.1 to 3 in the suit.

3. The said suit was filed for partition against petitioners and other respondents.

4. Trial commenced and PW.1 was examined in chief. For cross-examination of PW.1, the counsel for petitioners did not turn up. Therefore, the court closed the same.

5. Thereafter, I.A.No.1127 of 2012 was filed by petitioners to recall PW.1 for cross-examination. It was allowed on 02.04.2013 with costs of Rs.200/-, payable on or before 15.04.2013. Since the costs were not paid, the said application was dismissed on 15.04.2013.

6. Thereafter, I.A.No.723 of 2014 was again filed to recall PW.1 for cross-examination. The said application was also dismissed on 18.11.2014.

7. Thereafter, I.A.No.405 of 2015 was filed again to recall PW.1 for cross-examination contending that I.A.No.723 of 2014 was dismissed without hearing petitioners.

8. This application was opposed by respondents narrating the above facts, and contending that the dismissal of I.A.No.723 of 2014 operates as *res judicata* and the application is filed only to drag on the matter after the suit is posted for arguments.

9. By the impugned order dt.20.07.2015, the court below dismissed I.A.No.405 of 2015. It held that in spite of giving opportunity to petitioners to cross-examine PW.1 on payment of costs, they did not choose to pay costs and the said I.A. was dismissed; that even after dismissal of I.A.No.723 of 2014 also, on 20.07.2015 neither the petitioners nor their counsel were present and there was no representation on their behalf; and therefore, I.A.No.405 of 2015 was dismissed with costs of Rs.500/-.

10. Although the counsel for petitioners sought to plead that there was no negligence on the part of petitioners and that on account of Advocates' strike the counsel did not appear, I am of the opinion that the said plea has not been taken in the affidavit filed in support of I.A.No.405 of 2015. In fact, it is alleged therein that the counsel for petitioners had not informed them about the

stage of the case and the petitioners also did not contact their Advocate nor instructed him to cross-examine PW.1.

11. In view of these averments, it is clear that petitioners have been negligent in taking steps to cross-examine PW.1 in spite of the fact that an opportunity was granted to them to cross-examine PW.1 on payment of costs of Rs.200/-; by not paying the said costs. So, I do not find any error of jurisdiction in the order passed by the court below warranting interference by this Court under Article 227 of the Constitution of India. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

12. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 14.08.2015

Ndr/*