

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4147 of 2012

ORDER :

This Revision is filed under Section 115 C.P.C. challenging the order dt.25.06.2012 in I.A.No.3695 of 2011 in A.S.S.R.No.36977 of 2010 on the file of Chief Judge, City Civil Court, Hyderabad.

2. The petitioner herein is defendant in O.S.No.3320 of 2007 filed by respondent against him for declaration of title and for possession of the suit schedule property.

3. The suit was decreed on 23.03.2010 which was an *ex parte* decree.

4. The petitioner filed I.A.No.1070 of 2010 under Order 9 Rule 13 C.P.C. to condone the delay of (205) days in filing the petition; and to set aside the said decree.

5. On 29.07.2011, the said I.A. was dismissed with the following observations :

“He (the petitioner) simply averred in the affidavit that the counsel assured him that whenever his presence is required, he would be informed of the same and therefore, he did not contact his counsel, and meanwhile he also fell sick. A litigant is expected to be diligent to find out the stage of the case periodically from his counsel. The petitioner filed this petition through another counsel, and he did not state in his affidavit that as to what action he initiated against the previous counsel for not informing him about the proceedings as assured by him. However, a mistake by a lawyer cannot be accepted as a sufficient

cause. Absolutely no sufficient cause is given by the petitioner for condoning the delay. The petitioner has not given any reasons for the delay from the date of knowledge of the ex parte decree and judgment dated 24.08.2010 till the filing of the petition on 16.11.2010. The explanation given by the petitioner is neither reasonable nor proper one so as to constitute sufficient cause. I am not inclined to condone the delay and the petition is liable to be dismissed.”

6. This was questioned by petitioner in C.R.P.No.5504 of 2011 before this Court. However, when the said CRP came up for hearing, the petitioner submitted to this Court that he had filed A.S.S.R.No.36977 of 2010 before this Court and had filed I.A.No.3695 of 2011 under Section 5 of the Limitation Act, 1963 to condone the delay of (188) days in preferring an appeal against the judgment dt.23.03.2010 in O.S.No.3320 of 2007, and that a direction be given to dispose of the said I.A. Therefore, CRP.No.5504 of 2011 was disposed of directing disposal of I.A.No.3695 of 2011. Thus, the order passed in I.A.No.1070 of 2010 refusing to condone the delay of (205) days was confirmed by implication.

7. I.A.No.3695 of 2011 had been filed on 30.10.2010 to condone the delay of (188) days in filing A.S.S.R.No.36977 of 2010 and the reasons given in the affidavit filed in support of this application are identical with the reasons given for condoning the delay of (205) days in filing the petition under Order 9 Rule 13 C.P.C., i.e., I.A.No.1070 of 2010. In this application two contentions

were raised by petitioner (i) that the counsel for petitioner had not informed him about the pendency of the proceedings in the Court and he had come to know about the decree only on 24.08.2010 when the bailiff came showing the warrant of eviction; and (ii) that petitioner was suffering from ill-health and he had suffered from Typhoid, and therefore, he could not contact his counsel.

8. Counter-affidavit was filed to this application opposing these issues.

9. By order dt.25.06.2012, the Court below dismissed I.A.No.3695 of 2011 not only relying upon the order dt.29.07.2011 in I.A.No.1070 of 2010 (dismissing the application to condone the delay of (205) days in filing the application under Order 9 Rule 13 C.P.C.), but also on the ground that it was the duty of petitioner to be in contact with his counsel, and the petitioner himself admitted that he did not contact his counsel during the pendency of suit even though there was no communication from his counsel for a long time.

10. Questioning the same, the present Revision is filed.

11. Heard Sri K. Rama Mohan Mahadeva, counsel for petitioner; and Sri Srinivas Emani, counsel for respondents.

12. Although the counsel for petitioner sought to

contend that the order passed by the Court below is not correct and that the Court below ought to have adopted a liberal approach and condoned the delay of (188) days in filing the appeal, I am of the opinion that the said contention does not deserve any consideration for the following reasons. Originally in I.A.No.3695 of 2011, the petitioner had only pleaded that his counsel did not inform him about the proceedings in the suit and that when he contacted his counsel on receiving information about the decree against him on 24.08.2010, the counsel told him that he was suffering from ill-health and he could not inform about the proceedings to him.

13. In the reply-affidavit, for the first time, a plea of illness of petitioner is pleaded. The period of illness according to medical certificate filed by petitioner was only for a short period i.e., from 01.04.2010 to 13.05.2010 and the medical certificate dt.15.05.2010 filed by petitioner indicated that he was found fit to resume normal duties from 14.05.2010. If the petitioner was fit from 14.05.2010, why petitioner did not choose to file the appeal immediately and waited till 30.10.2010, is not explained.

14. As rightly held by the Court below, when petitioner himself admitted that his counsel was not in touch with him, the petitioner ought to have shown more interest in the proceedings in suit and tried to ascertain the same himself. He cannot blame his counsel for not contacting

him.

15. Having regard to these facts and also having regard to the fact that the reasons now assigned by petitioner were also stated by petitioner in I.A.No.1070 of 2010 which had been dismissed on 29.07.2011 and confirmed in CRP.No.5504 of 2011, I am of the opinion that there are no merits in the Revision. It is accordingly dismissed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 30.09.2015

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