

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Civil Revision Petition No.2452 of 2015

Date: 04-09-2015

Between:

M. Rami Reddy

.. Petitioner

AND

B.V.S. Kiran Kumar

.. Respondent

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Civil Revision Petition No.2452 of 2015

ORDER:

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This Civil Revision Petition is directed against the order dated

30-03-2015 in I.A.No.50 of 2013 in O.S.No.16 of 2013 passed by the Additional Senior Civil Judge, Kurnool, dismissing the application filed under Section 5 of the Limitation Act for condoning the delay of 150 days in filing the petition under Order 9 Rule 13 of the Code of Civil Procedure to set aside *ex parte* decree dated 14-06-2013.

2. The case of the revision petitioner is that the respondent-plaintiff filed O.S.No.16 of 2013 against the petitioner-defendant for recovery of suit amount. Along with the suit, the respondent-plaintiff filed I.A.No.14 of 2013 for attachment before judgment of the property of the petitioner-defendant and since the petitioner-defendant failed to give security, the property was attached and the suit was posted for filing written statement. On 24-06-2013, as the petitioner-defendant failed to file the written statement, he was set *ex parte* and *ex parte* decree was passed on 24-06-2013. As there was

delay in filing the petition under Order 9 Rule 13 CPC for setting aside the ex parte decree, the present application has been filed for condoning the delay. The Court below, considering the facts and circumstances of the case, dismissed the application. Aggrieved by the said order, the present revision petition has been filed.

3. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent.

4. Learned counsel for the petitioner submits that though the petitioner has given sufficient reasons for the delay, the Court below without considering the same in proper perspective dismissed the application. He submits that the delay of 150 days have to be condoned in view of the reasons mentioned in the affidavit filed in support of the application. In support of his contentions, he relied on **M/s. GMG Engineering Industries and others v. M/s. ISSA Green Power Solutions and others**^[1].

5. On the other hand, learned counsel for the respondent stated that the petitioner was simultaneously defending the suit O.S.No.323 of 2011 on the file of Principal Junior Civil Judge, Kurnool filed by the respondent against the petitioner and he has also prosecuting Criminal Appeal No.11 of 2013 on the file of IV Additional District Judge, Kurnool. He further submits that no medical certificate has been produced in support of his illness and that as there were no sufficient grounds to condone the delay, the Court below has rightly dismissed the application and that the petitioner is not diligent in prosecuting the suit and there are no merits in the case and the order under revision needs no interference.

6. It is to be seen that the petitioner categorically stated that he is doing agricultural operations, but on the other hand he specifically stated that as he was suffering from jaundice and became weak, he could not contact his counsel to ascertain the stage of the suit. In

support of his contention that he is suffering from jaundice, the petitioner failed to produce any medical certificate to that effect, more so, the affidavit in support of the petition is very vague and contained no sufficient reason for condonation of delay. It is also to be seen that the petitioner is pursuing another suit O.S.No.323 of 2011 filed by the same plaintiff against him before another court in the same town where the present suit is pending. It is not known as to why the petitioner is actively participating in O.S.No.323 of 2011 ignoring the pendency of the present suit in which the petitioner did not even choose to file written statement, more so, the present suit is of the year 2013. No plausible reason was assigned in the affidavit in support of the petition. In view of the above facts and circumstances, it cannot be said that the court below dismissed the application without appreciating the said facts. When this court was not inclined to entertain the revision petition, the learned counsel for the petitioner was asked to pay the entire suit amount, but he stated that the revision petitioner-defendant is not in a position to pay the entire suit amount of Rs.2,30,000/-, as he has already paid an amount of Rs.1,70,000/- and a specific plea was taken in the written statement to that effect. He further stated that the revision petitioner is ready and willing to deposit the admitted amount of Rs.60,000/- along with interest, as the said amount is due from the date of execution of the pronote. In view of above facts and circumstances, the petitioner has to be mulcted with costs as he is not diligent in prosecuting the suit.

7. Accordingly, the Civil Revision Petition is allowed on condition of the petitioner depositing an amount of Rs.60,000/- along with interest from the date of execution of the promissory note within a period of four (4) weeks from today and also on payment of costs of Rs.10,000/- payable to the respondent-plaintiff. On such payment

of Rs.60,000/- along with interest, the respondent-plaintiff is permitted to withdraw the said amount along with costs without furnishing any security. However, the trial court shall decide the suit on merits without being influenced by the observations made herein as they are made only for the purpose of deciding the revision petition.

A. RAJASHEKER REDDY, J

Date: 04-09-2015

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