

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.4547 of 2014

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ORDER:

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This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.05-09-2014 in I.A.No.1136 of 2014 in O.S.No.92 of 2012 of the III Additional Chief Judge, City Civil Court, Hyderabad.

2. The petitioners herein are plaintiffs in the above suit. Originally they filed the above suit against respondents to set aside the judgment and decree in dt.04-11-1998 in O.S.No.1476 of 1997 of the I Senior Civil Judge, City Civil Court, Hyderabad .

3. The suit was originally numbered as O.S.No.2024 of 2008 as it was filed before the V Senior Civil Judge, City Civil Court, Hyderabad. Later it was transferred to the Court of III Additional Chief Judge, City Civil Court, Hyderabad and renumbered as O.S.No.92 of 2012.

4. When the said suit was pending before the V Senior Civil Judge, City Civil Court, Hyderabad as O.S.No.2024 of 2008, the petitioners herein represented to the Court that they did not wish to pursue the suit against defendant Nos.2 to 5. So, it was dismissed against them as not

pressed on 17-12-2009.

5. Thereafter, the suit appears to have been transferred to the Court of III Additional Chief Judge, City Civil Court, Hyderabad and renumbered as O.S.No.92 of 2012.

6. Without noticing that at the instance of petitioners, the suit had been dismissed as against defendant Nos.2 to 5, the Court below appeared to have directed payment of batta to defendant Nos.2 to 5.

7. On the ground that the said batta was not paid, it dismissed the suit again against defendant Nos.2 to 5 on 01-08-2013.

8. The petitioners filed I.A.No.1136 of 2014 under Order IX Rule 4 CPC praying the Court to set aside the order dt.01-08-2013 dismissing the suit against defendant Nos.2 to 5. In the affidavit filed in support of the said application, the petitioners suppressed the fact that as against defendant Nos.2 to 5, the suit had been already dismissed on 17-12-2009 when it was numbered as O.S.No.2024 of 2008 before the V Senior Civil Judge, City Civil Court, Hyderabad.

9. By order dt.05-09-2014, the Court below dismissed I.A.No.1136 of 2014 on the ground that O.S.No.92 of 2012

on its file was directed by this Court to be heard along with E.P.No.43 of 2013 and since the petitioners were not able to furnish the particulars of defendant Nos.2 to 5, the matter is getting dragged on and causing inconvenience to the Decree Holder. It therefore dismissed the I.A. to enable the parties to proceed with the suit since otherwise it affects the rights of Decree Holder in E.P.No.43 of 2013.

10. Challenging the same, this Revision is filed.

11. Heard Sri Nazir Ahmed Khan, learned counsel for petitioners and Sri Aadesh Varma, learned counsel for 1st respondent.

12. The learned counsel for petitioners contended that the order passed by the Court below is not correct and sustainable. He claimed that the process was deposited in the S.R. Box on 01-08-2013; this procedure was different from the earlier procedure of depositing of process in the Court Section; without noticing the deposit of process for defendant Nos.2 to 5 on 01-08-2013, the Court below had dismissed the suit against defendant Nos.2 to 5.

13. The learned counsel for respondents, on the other hand, brought to the notice of this Court the fact that on 17-12-2009, the petitioners themselves had reported to the Court below that they were not pressing the relief in

the suit against defendant Nos.2 to 5 resulting in dismissal of the suit against defendant Nos.2 to 5 on 17-12-2009. He also pointed out that this fact was suppressed by petitioners.

14. The learned counsel for petitioners submits that he was not aware of the order dt.17-12-2009 of the V Senior Civil Judge, City Civil Court, Hyderabad in O.S.No.2024 of 2008 dismissing the suit as against defendant Nos.2 to 5.

15. In my opinion even if the learned counsel now on record for petitioners is not aware of the said fact, the petitioners are undoubtedly aware of the same. If they have not correctly instructed the counsel for petitioners, then they have to suffer for suppressing the said fact not only to their counsel but also to the Court below and to this Court.

16. Once the suit has been dismissed as not pressed on 17-12-2009 against defendant Nos.2 to 5, there is no necessity for payment of any batta or process to them and the dismissal of the suit again on 01-08-2013 against defendant Nos.2 to 5 is *non est* in the eye of law.

17. In this view of the matter, I am of the opinion that there is no merit in the Revision and the same is

accordingly dismissed with costs of Rs.3,000/- (Rupees Three Thousand only) to be paid by petitioners to 1st respondent. The said costs shall be paid within three months from the date of receipt of a copy of this order.

18. Since the suit is of the year 2008 and it was renumbered in the year 2012, the Court below shall endeavour to dispose of the suit expeditiously preferably within a period of six months from the date of receipt of a copy of this order.

19. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 16-06-2015

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