

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.415 of 2015

ORDER :

This Revision is filed under Section 115 C.P.C. challenging the order dt.22.12.2014 in I.A.No.12 of 2014 in O.S.No.14 of 2010 on the file of Senior Civil Judge, Parchur.

2. The petitioner herein is the defendant in the suit.
3. He was set *ex parte* in the suit, and an *ex parte* decree was passed on 20.03.2012.
4. An application under Order 9 Rule 13 C.P.C. was presented by petitioner. The same was returned with certain objections. It was represented with a delay of (521) days along with an application I.A.No.12 of 2014 under Section 5 of the Limitation Act, 1963 to condone the said delay.
5. In the affidavit filed by the Advocate for petitioner in support of the said IA it was stated that due to oversight and on account of the fact that the petition was misplaced, it could not be represented in time.
6. Counter-affidavit was filed to the said application opposing the condonation of delay.
7. By order dt.22.12.2014, the Court below dismissed the said I.A. stating that the affidavit filed by the Advocate for petitioner is in a printed form; and that the

said explanation was not at all convincing and plausible.

8. Challenging the same, the present Revision is filed.

9. Heard Sri G. Sridhar, counsel for petitioner; and Sri N. Satyanarayana, counsel for respondent.

10. The counsel for petitioner contended that on account of the fault of the counsel, the petitioner cannot be allowed to suffer, since it was the counsel for petitioner who took return of the application under Order 9 Rule 13 and did not represent it within time.

11. Although the counsel for respondent refuted the said contention, I am of the opinion that petitioner cannot be allowed to suffer for the fault of his counsel in not representing the application under Order 9 Rule 13 C.P.C. within the time granted by the trial court. The court below is not correct in stating that explanation given by petitioner is not at all convincing or plausible.

12. Therefore, the Civil Revision Petition is allowed and the order dt.22.12.2014 in I.A.No.12 of 2014 in O.S.No.14 of 2010 on the file of Senior Civil Judge, Parchur is set aside; and the said I.A. is allowed. No order as to costs.

13. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 05.08.2015

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