

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

CIVIL REVISION PETITION No.1883 of 2013

-
-
ORDER:
-

This Civil Revision Petition is filed challenging the order

dt.06-03-2013 in I.A.No.105 of 2010 in O.S.No.255 of 2003 of the Principal Senior Civil Judge, Narasaraopet refusing to condone the delay of 782 days in filing petition under Order IX Rule 13 CPC to set aside the *ex parte* decree dt.10-09-2007 in the suit.

2. The petitioner herein was 2nd defendant in the above suit.

3. The 1st respondent filed the said suit against petitioner and

2nd respondent for recovery of money on the basis of a promissory note executed by petitioner and 2nd respondent in favour of

1st respondent. The matter was posted for the evidence of petitioner on 06-09-2007. Since the petitioner did not lead any evidence, his side evidence was closed, the matter was posted for hearing arguments, and ultimately

judgment was pronounced on 10-09-2007. Thereafter the 1st respondent/Decree Holder filed E.P.No.30 of 2009 to execute the decree.

4. At that stage, the petitioner filed I.A.No.105 of 2010 under Section 5 of the Limitation Act, 1963 to condone the delay of 782 days in filing the petition under Order IX Rule 13 CPC and also another application under Order IX Rule 13 CPC.

5. In the affidavit filed in support of this application, the petitioner contended that he fell ill on account of pulmonary tuberculosis from 01-08-2007 onwards and had been taking bed rest from 23-02-2009. He claimed that he was admitted as inpatient at Venkata Raghava Nursing Home, Chilakaluripet and his treatment went on from 01-08-2007 to 22-02-2009, that only after he recovered from that illness, he got the things enquired through his counsel and came to know about the *ex parte* decree. He also stated that 2nd respondent/2nd defendant also did not contest the matter although the petitioner's counsel cross-examined P.Ws. He contended that there is no wilful default or neglect on his part and he had a good case to defend. He also claimed that 2nd respondent assured him that he would look after the suit proceedings on his behalf but he did not do anything. The

petitioner also relied upon the certificate dt.22-11-2009 said to have been issued by Dr.A.Venkateswarlu, Chilakaluripet.

6. Counter affidavit was filed by 1st respondent opposing this application. The 1st respondent denied that petitioner fell ill on 08-10-2007 and from then onwards he was taking bed rest upto 22-11-2009 on account of pulmonary tuberculosis. It is contended that the alleged illness is created for the purpose of filing this petition and since the petitioner had intentionally not adduced evidence before the Court, it rightly passed the decree thereon on 10-09-2007.

7. By order dt.06-03-2013, the Court below dismissed the said I.A. It referred to the medical certificate filed by petitioner and noticed that in that certificate it was only mentioned that the petitioner was inpatient for one month only and that he was treated as outpatient from 01-08-2007 to 02-11-2009. It held that the said certificate is inconsistent with the averments in the petitioner's affidavit that from 01-08-2007 till 02-11-2009 he was advised bed rest. It held that since the petitioner was treated only as outpatient, he could have pursued the matter through any of his agents or advocate, but he kept quiet for 2 years

and then filed this petition.

8. Challenging the same, this Revision is filed.

9. The learned counsel for petitioner Sri Naga Praveen Vankayalapati contended that the petitioner has strong defence in the suit and he was misled by the 2nd defendant, who also did not contest the suit. He contended that since the petitioner was suffering from pulmonary tuberculosis from 01-08-2007 to 02-11-2009 sufficient cause exists for not filing the application to set aside the *ex parte* decree within the time permitted by law.

10. The learned counsel for 1st respondent Sri Sricharan Telaprolu refuted these contentions and supported the order passed by the Court below.

11. I have noted the submissions on both sides.

12. The *ex parte* decree in the suit was passed on 10-09-2007. Thereafter the 1st respondent filed E.P.No.30 of 2009. After receiving notice in the Execution Petition, I.A.No.105 of 2010 was filed by petitioner on 27-11-2009 to condone the delay of 782 days in filing the petition to set aside the *ex parte* decree. While in the affidavit filed in support of I.A.No.105 of 2010 the petitioner contended that he was inpatient and undergoing treatment at

Venkata Raghava Nursing Home, Chilakaluripet from 01-08-2007 to 22-02-2009, the medical certificate produced by petitioner showed that he was inpatient only for one month and he was treated as outpatient from 01-08-2007 to 02-11-2009. Therefore, as rightly observed by the Court below, the petitioner could have pursued the matter through any of his agents or advocate.

13. Admittedly, the petitioner had received summons in the suit, engaged a counsel and even filed a written statement. The petitioner's counsel admittedly cross-examined witnesses on behalf of

1st respondent. If the petitioner had any difficulty to go to Court to give evidence, he could have requested the Court to appoint an Advocate-Commissioner to record his evidence on account of his illness, but he chose not to do so. Even otherwise, since he was treated only as outpatient from 01-08-2007 and since the decree was passed on 10-09-2007, the petitioner could have defended himself by instructing his advocate appropriately. Even according to petitioner, his treatment went on from 01-08-2007 to 22-02-2009, but he waited till 27-11-2009 to file the application to condone the delay and to set aside the *ex parte* decree. No explanation is forthcoming from the petitioner as to why he had done

nothing for 9 months. These facts clearly indicate that petitioner had been negligent in taking steps to defend himself in the suit. He cannot blame the 2nd respondent for not contesting the suit on merits. Therefore, I am of the opinion that the Court below was right in not condoning the delay of 782 days in filing the petition to set aside the *ex parte* decree dt.06-09-2007.

14. I do not find any merit in the Revision and it is accordingly dismissed. No costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 07-07-2015

Vsv