

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

Civil Revision Petition No.4781 of 2015

ORDER:

This Civil Revision Petition is filed challenging the order dt.31.10.2014 in CMA.No.19 of 2014 of the District Judge, Anantapur confirming the order dt.30.07.2014 in I.A.No.346 of 2014 in O.S.No.155 of 2009 of the Principal Junior Civil Judge, Anantapur.

2. The petitioners herein are the plaintiffs in the above suit. The said suit was filed for a perpetual injunction restraining the respondents from interfering with their alleged peaceful possession and enjoyment of the suit schedule property.

3. Written statement was filed by the respondents opposing the suit claim.

4. After issues were framed and when the case was coming for cross-examination of PW1, it was posted to 13.03.2014. On that day, the 1st petitioner/1st plaintiff failed to appear before the Court for his cross-examination. So, the suit was dismissed for default.

5. On 01.04.2014, the 1st petitioner filed I.A.No.346 of 2014 under Order IX Rule 9 CPC to set aside the order dismissing the suit for default. He contended that when

he was coming to the Court on 13.03.2014, he met with an accident and sustained certain injuries on his body and that was the reason why he could not be present in the Court to undergo further cross-examination on that day.

6. Counter affidavit was filed by the respondents opposing this application contending that there are no sufficient grounds to allow it and that sufficient time had already been granted to the petitioners and the same had not been availed of.

7. By docket order dt.30.07.2014, the trial Court dismissed the application. It observed that the affidavit in lieu of chief examination of the 1st petitioner had been filed on 21.11.2012 and thereafter the matter was adjourned several times for appearance of PW1/1st petitioner for cross-examination and costs were also imposed. But in view of the absence of the 1st petitioner on 13.03.2014, the suit was dismissed for default. It held that there was no probable and reasonable cause for the absence of the 1st petitioner, since no evidence in support of the injuries suffered by him in the alleged accident on 13.03.2014 has been placed before the Court.

8. Questioning the same, the petitioners filed CMA.No.19 of 2014 before the District Judge, Anantapur. The said Court also confirmed the order of the trial Court holding that no material is placed by the 1st petitioner to

show that he sustained injuries in the alleged accident on 13.03.2014.

9. Challenging the same, this Revision is filed.

10. Sri K.Narsi Reddy, counsel for the petitioners contended that both the Courts below have erred in dismissing the application filed by the petitioners seeking restoration of the suit which had been dismissed for default, even though application for restoration was filed within 30 days of the date of dismissal of the suit for default; that the earlier instances of absence quoted by the Courts below cannot be taken into account, since the same had been condoned; that in any event the certificate of the Government General Hospital, Annapur is now filed at page 19 showing the treatment that the 1st petitioner had undergone on account of the injuries sustained by him in the accident that occurred on 13.03.2014; and so the orders of the Courts below be set aside.

11. Although counsel for the respondents 2 and 3, Sri N.Aswarth Narayana contended that the orders passed by the Courts below are correct, I am of the view that the application to restore the suit which had been dismissed for default, had been filed within 30 days from the date of its dismissal for default. So, it cannot be said that there is any undue delay on the part of the petitioners in filing the application to restore the suit.

12. Further, though the petitioners had not filed in the trial Court or in the lower appellate Court any material in support of their plea that the 1st petitioner suffered an accident on 13.03.2014, in view of the certified copy of the Government General Hospital's out-patient ticket dt.13.03.2014 produced in this Court indicating that the 1st petitioner sustained an accident from his scooter on 13.03.2014 and underwent treatment therein, I am of the view that it is a fit case where the orders passed by both the Courts below should be set aside. I am also of the opinion that "sufficient cause" for non appearance refers only to the date on which the absence was made as a ground for dismissal of the suit and cannot stretch to rely upon the circumstances anterior in time. Even assuming for the sake of argument that the petitioner had not cooperated on the earlier dates of hearing, since the same had already been condoned, the said factor ought not to have been taken into account by the Courts below.

13. Therefore, this Civil Revision Petition is allowed. Order dt.31.10.2014 in CMA.No.19 of 2014 of the District Judge Anantapur and order dt.30.07.2014 in I.A.No.346 of 2014 in O.S.No.155 of 2009 of the Principal Junior Civil Judge, Anantapur, are both set aside. I.A.No.346 of 2014 is allowed. The 1st petitioner shall appear and undergo cross-examination in the trial Court on 26.10.2015 without

fail. Since the suit is of the year 2009, the Court below shall endeavour to dispose of the suit as expeditiously as possible, preferably within a period of four (04) months from the date of receipt of copy of this order. There shall be no order as to costs.

14. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

21st September, 2015

Note: *Issue C.C. in one week.*

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