

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

CIVIL REVISION PETITION No.558 of 2014

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ORDER:
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This Civil Revision Petition is filed challenging the order

dt.21-10-2013 in I.A.No.60 of 2012 in O.S.No.1608 of 2005 of the

IV Senior Civil Judge, FAC IX Senior Civil Judge (FTC), City Civil Court, Hyderabad.

2. The petitioner herein is plaintiff in the suit.

3. He filed the suit against respondents for recovery of a sum of Rs.1,31,000/- with future interest. The said suit was dismissed for default on 21-02-2007.

4. On 18-07-2012, almost 5½ years later, the petitioner filed I.A.No.60 of 2012 under Section 5 of the Limitation Act, 1963 to condone the delay of 1842 days in filing petition for restoration of suit and another application for restoration of the suit.

5. In the said application, it is stated that his counsel did not inform him about the date of hearing, that the counsel had misled him that he was taking dates of

adjournments and that in view of agitation for separate State of Telangana, the case was getting adjourned. It is also alleged that his counsel told him that he filed a consumer case before the District Consumer Forum for recovery of money against respondents. He stated that since the said counsel had misled him, he engaged the present counsel Smt.Radhika Devi, who filed vakalat on 02-07-2012 and obtained certified copies of the papers in the suit. He also stated that he is taking steps to lodge a complaint before the police and the Bar Council against the counsel for cheating him.

6. Counter affidavit was filed by 1st respondent on behalf of other respondents opposing the condonation of delay. The respondents contended that it was the duty of petitioner to prosecute his case with due diligence and that there was no agitation for Telangana State in the year 2007 and this ground is invented only for the purpose of seeking condonation of delay. They contended that petitioner has not shown sufficient cause for condoning the said inordinate period of delay. They alleged that petitioner did not made any effort to contact his advocate to ascertain the fate of the suit and that this application is filed only to harass the respondents.

7. By order dt.21-10-2013, the Court below dismissed

I.A.No.60 of 2012. It held that although the petitioner need not have to attend on each and every date of hearing when the suit has been posted for trial, but it is his duty to attend the Court and he cannot abdicate the said responsibility. It held that mere averment of petitioner that the earlier counsel had not informed the suit proceedings to him cannot be countenanced. It held that efforts should have been made by petitioner to know about the suit and he slept for 5 years and then filed this application.

8. Challenging the same, this Revision is filed.

9. The learned counsel for petitioner Sri S.Ashok Anand Kumar contended that the petitioner was misled by his counsel, that was why the petitioner had not kept track of the proceedings and therefore the application seeking condonation of delay should have been allowed by the trial Court.

10. There is no dispute that it was the petitioner who filed the suit in the year 2005 for recovery of money against respondents. When the suit was posted to 21-02-2007 for trial, the petitioner did not appear in the Court below. The Court below therefore dismissed the suit for default on the same day. Almost 5½ years later with a delay of 1842 days petitioner filed I.A. for restoring the suit and also

I.A.No.60 of 2012 for condoning the inordinate delay in filing the petition to restore the suit. It is the duty of petitioner to keep track of the events in the suit although he need not appear on each and every date of hearing of the suit. Petitioner cannot blame his counsel for not informing him about the events in the suit and on the said ground he cannot absolve himself of any responsibility to acquaint himself with the events in the suit. In my considered opinion, petitioner has clearly been negligent in prosecuting the suit and has conveniently chosen to blame his advocate for his own inaction. Therefore, I am of the opinion that the Court below had rightly refused to condone the delay of 1842 days in seeking restoration of the suit.

11. The Civil Revision Petition is without any merit and it is accordingly dismissed. No costs.

12. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 08-07-2015

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