

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4890 and 4891 of 2014

COMMON ORDER :

Since these two Revisions arise between the same parties, they are being disposed of by this common order.

2. The petitioner in both these Revisions is the defendant in O.S.No.119 of 2011 on the file of Principal Senior Civil Judge, Kurnool.
3. The said suit was filed by respondent/plaintiff against petitioner for recovery of money on the basis of a promissory note allegedly executed by petitioner in his favour.
4. Summons in the suit were served on petitioner and he also engaged a counsel, but the petitioner did not file any written statement in the suit.
5. The suit O.S.No.119 of 2011 was decreed on 26.09.2012.
6. The respondent then filed E.P.No.23 of 2013 seeking attachment of the salary of petitioner who is employed as an office subordinate in the Governor's household at Raj Bhavan, Hyderabad.
7. The petitioner filed I.A.No.527 of 2014 in March, 2014 under Section 5 of the Limitation Act, 1963 to condone the delay of (530) days in filing the petition to set aside the *ex parte* decree dt.26.09.2012 along with an application under Order 9 Rule 13 C.P.C. to set aside the *ex parte* decree. He also filed E.A.No.276

of 2014 to stay the execution proceedings in the E.P. alleging that he had filed the I.A.No.527 of 2014, and pending disposal of the same, further proceedings in the E.P. be stayed.

8. In the affidavit filed in support of I.A.No.527 of 2014 he stated that he gave *vakalat* to his previous counsel and instructed him to prepare written statement, but the counsel did not file it. He claimed that the counsel kept him in the dark and he was under the impression that the said counsel would look after the case proceedings on his behalf; that he blindly believed his earlier counsel who neglected and failed to follow-up the case; that the counsel did not inform him about the stage of the case; and that only after his salary was attached in execution proceedings, he came to know about the *ex parte* decree.
9. Counter-affidavit was filed opposing this application contending that petitioner is a well-educated Government employee having sufficient legal knowledge; petitioner's counsel received notice of chief-examination of PW.1 on 17.02.2012 and requested time for cross-examination of PW.1, and ten adjournments were taken for cross-examination of PW.1; the petitioner was thereafter set *ex parte* and the suit was decreed; and there were no reasonable grounds to condone the delay.
10. By separate orders dt.10.10.2014, the Court below dismissed both I.A.No.527 of 2014 and E.A.No.276 of 2014. It held that the E.P. had been filed in the year 2013 for execution of the decree and even though petitioner filed *vakalat* on 07.03.2013 in the E.P., he filed I.A.No.527 of 2014 seeking to condone the delay in setting aside the *ex parte* decree on 11.04.2014, i.e., one year thereafter, and this indicates gross negligence on the part of

petitioner; that petitioner cannot blame his earlier counsel since petitioner was aware of the suit proceedings, and several opportunities were given to cross-examine PW.1 which were not availed of leading to the suit being decided *ex parte*; petitioner is a Government employee and not an illiterate person and he should have contacted his counsel for defending himself in the suit; and that since I.A.No.527 of 2014 is dismissed, consequently E.A.No.276 of 2014 is also dismissed.

11. Challenging the same, the present Revisions are filed.
12. Although the counsel for petitioner sought to contend that petitioner was not informed by his earlier counsel about the proceedings in the suit, and that petitioner having been employed in Hyderabad could not find out about the proceedings in the Court at Kurnool where the suit is pending, I am unable to accept these submissions.
13. The petitioner had received the summons in the suit and engaged a counsel. Therefore, it was the duty of petitioner to ensure that a written statement was filed on his behalf and his interest is defended properly in the suit. The petitioner cannot simply blame the counsel for not doing the needful and it was his duty to keep track of the proceedings in the suit, if necessary by going to Kurnool and speaking to his Advocate and instructing him. The petitioner has not disputed that in E.P.No.23 of 2013 he engaged a counsel and filed *vakalat* on 07.03.2013. But the petitioner has not given any reason why till 11.04.2014, i.e., more than one year thereafter, he filed I.A.No.527 of 2014, and not immediately. Being an educated, employed person, the petitioner should have acted more diligently. But the facts stated

above, indicate that he had been negligent.

14. Therefore, I do not find any merit in the Revisions and they are accordingly dismissed. No order as to costs.

15. As a sequel, miscellaneous applications pending, if any, in these Revisions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 15.09.2015

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