

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

C.R.P.No.3729 of 2015

ORDER:

Heard Sri S.Chalapathi Rao, learned counsel for the petitioner and Sri D.Hanumantha Rao, learned counsel for the respondent.

2. This Revision Petition is filed challenging the order dt.07-08-2015 in I.A.No.494 of 2015 in O.S.No.211 of 2013 of the I Additional District Judge, Warangal.
3. The petitioner herein is the defendant in the said suit filed by the respondent against him for recovery of money. Summons were sent to the petitioner in the suit. He engaged a counsel who filed vakalat on 27-11-2013. Thereafter, the suit was adjourned from time to time and on 12-03-2014, since the petitioner did not appear and did not also file Written Statement, his right to file Written Statement was forfeited and the matter was posted to 21-03-2014 for his evidence. On that day plaintiff's evidence was recorded and the suit was decreed. Thereafter E.P.No.11 of 2015 was filed by the respondent for attachment of the salary of the petitioner and the attachment was affected on 25-02-2015.
4. Only thereafter, on 24-03-2015, petitioner filed I.A.No.494 of 2015 under Section 5 of the Limitation Act, 1963 to condone delay of 338 days in seeking to set aside the *ex parte* decree along with a separate application to set aside *ex parte* decree. In the affidavit filed in support of this application, petitioner contended that his mother was suffering from ill-health on account of old age and being the only son, he was providing treatment to her by visiting several hospitals. He contended that due to work pressure also he could not approach his counsel to

prepare Written Statement and could not file the same before the Court.

5. Counter affidavit was filed by the respondent opposing the same. The allegations made by the petitioner in I.A.No.494 of 2015 were denied by the respondent and it was contended that the petitioner had knowledge about the decree in the suit and he had not filed the application to set aside the decree within the period of limitation. It was also contended that no case is made out for condonation of the said delay.
6. By order dt.07-08-2015, the Court below dismissed I.A.No.494 of 2015 observing that only one month after the attachment of the salary in E.P.No.11 of 2015, I.A.No.494 of 2015 was filed and the reasons given by the petitioner for not filing Written Statement or approaching the Court earlier are not valid and *bona fide*.
7. Challenging the same, this Revision petition is filed.
8. In this Revision Petition, the petitioner had filed C.R.P.M.P.No.5281 of 2015 to permit him to file certain additional documents which are certain medical bills allegedly issued for purchase of medicines for treatment of the petitioner's mother apart from the discharge summary issued by a certain Warangal hospital showing that she was admitted in hospital on 14-10-2014 and discharged on 27-10-2014. The proceeding dt.14-11-2013 shows that the petitioner went on leave from 18-08-2013 to 13-11-2013 was issued by the Principal Government Junior College (Co-education), Hanamkonda, was also filed.
9. Learned counsel for the petitioner contended that in view of

the above material, a liberal view may be taken and the delay in filing the application to set aside the *ex parte* decree be condoned.

10. Learned counsel for the respondent however refuted the above contention and supported the order passed by the Court below.

11. It is not denied by the petitioner that he received summons in the suit and got a vakalat filed through his advocate on 27-11-2013. He is expected to see that a Written Statement was filed in the suit within 30 days. But he failed to do so. Admittedly, the petitioner did not appear by 12-03-2014 and file Written Statement. Therefore, he was set *ex parte* and on 21-03-2014, the suit was decreed *ex parte*. Petitioner's salary was attached on 25-02-2015 and almost a month later on 24-03-2015, he filed I.A.No.494 of 2015. From 27-11-2013 till 24-03-2015, the petitioner has taken no steps to contest the suit or to ascertain the stage of the suit. May be the petitioner took leave from 18-08-2013 to 13-11-2013, but this period is prior to the filing of the vakalat by his counsel on 27-11-2013. The treatment and medical bills of his mother pertain to October 2014, seven months after the suit is decreed and do not relate to the period when the suit was decreed on 21-03-2014.

12. In my considered opinion, it was the duty of the petitioner to ensure the suit is properly contested by instructing his advocate and the petitioner cannot take advantage of his mother's illness and avoid doing so. It is not the case of the petitioner that he was not attending to his employment from 27-11-2013 till 24-03-2015.

13. I therefore do not find any error of jurisdiction in the order of the Court below refusing to condone delay of 338 days in filing the application to set aside the *ex parte* decree.
14. Therefore, I do not find any merit in the Civil Revision Petition and the same is accordingly dismissed. No costs.
15. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 21-09-2015

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