

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

C.R.P.No.4566 of 2012

ORDER :

This Civil Revision Petition is filed challenging the order dt.20.07.2012 in I.A.No.34 of 2012 in OSSR.No.7155 of 2008 of the II Junior Civil Judge, City Civil Court, Hyderabad.

2. The petitioners herein had filed the above suit for a mandatory injunction against the respondents to allot 5,000 equity shares of Rs.10/- each for each folio number of the petitioners at a price of Rs.250/- on application and Rs.250/- on allotment and call money on each equity share as mentioned therein.

3. Although, the plaint was returned on 25.06.2008 raising an objection as to its jurisdiction to entertain it and it was not re-presented till 05.08.2012.

4. The petitioners therefore filed I.A.No.34 of 2012 under Section 148 of Civil Procedure Code, 1908 to condone the delay of 1370 days in re-presenting the plaint.

5. In the affidavit filed in support of the said application it was stated that the suit was filed through one Sri S.B.Md.Ibrahim, Advocate at Hyderabad who had assigned it to his junior; that when the 1st petitioner inquired about the case, the advocate and his junior were not in a position to give a proper reply as to the status of the suit; subsequently the junior of the said advocate who was assigned the petitioners' case left the services of the said advocate; the said junior advocate appears to have misplaced the petitioners' file and therefore the petitioners were not even aware of the return of the plaint; and that after the file was traced and returned to the petitioners, they have re-presented the plaint with a delay of 1370 days. Petitioners contended that this delay is neither willful nor wanton and the same may therefore be condoned.

6. The respondent was set ex parte in this application.

7. By order dt.20.07.2012, the Court below dismissed the application. It held that the plaint was returned on 25.06.2008 with an objection raised relating to jurisdiction of the Court below to entertain it and directed the petitioners to present it before the proper Court; but after lapse of 1370 days, the petitioners again re-presented the case to the same court; the affidavit of the senior advocate Sri S.B.Md.Ibrahim was not even filed to show that he entrusted the record to his junior advocate and that the latter had not informed the petitioners about the stage of case; and since there was no reasonable explanation for the abnormal delay of more than three years, the suit itself is barred.

8. Challenging the same, this Revision is filed.

9. Heard Sri J.Janaki Rami Reddy, Counsel for the petitioners and Sri P.Ramachandran, Counsel for the respondent.

10. Counsel for the petitioners contended that the petitioners cannot be made to suffer if the file is misplaced by the junior advocate attached to Sri S.B.Md.Ibrahim, who had been engaged by them, and the Court below is not correct in saying that this is not a reasonable explanation and that the limitation period has expired for the main relief itself. He also pointed out that the petitioners would try to satisfy the Court below about its jurisdiction and if the Court below is not satisfied, he would then present it in the appropriate Court.

11. Counsel for the respondent refuted the above contentions and supported the order passed by the Court below.

12. I have noted the submissions of both sides.

13. After perusing the affidavit filed by the petitioners in support of I.A.No.34 of 2012, I am satisfied that the reason given by the petitioners for not re-presenting the matter within time is a valid reason and that the petitioners should not be made to suffer for the negligence of the junior counsel of the advocate Sri S.B.Md.Ibrahim engaged by them in misplacing the file. Therefore, the Court below is not correct in stating that the petitioners have not given reasonable explanation for the delay in re-presenting the plaint. Therefore, the Court below is also not correct in dismissing the I.A.No.34 of 2012, but in the facts and circumstances of the case, the delay can be condoned on payment of costs.

14. If the delay in re-presenting the plaint is condoned, the suit itself would have to be considered on merits including the objection if any raised by the respondent as to bar of limitation.

15. Further, the order of the Court below does not indicate whether the objection as to jurisdiction raised by it relates to territorial jurisdiction or pecuniary jurisdiction of the Court.

16. In this view of the matter, this Civil Revision Petition is allowed. The order dt.20.07.2012 in IA.No.34 of 2012 in OS.SR.No.7155 of 2008 of the II Junior civil Judge, City Civil Court, Hyderabad is set aside and the said I.A. is allowed condoning the delay of 1370 days in re-presenting the OS.SR.No.7155 of 2008 on payment of costs of Rs.1370/- to the respondent within four weeks from date of receipt of a copy of this order. The Court below is directed to consider afresh the question of territorial or pecuniary jurisdiction raised by it and then pass a reasoned order in that regard.

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

M.S.RAMACHANDRA RAO, J

06th October, 2015.

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