

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.5550 of 2016

ORDER :

This Revision is filed challenging the order dt.14.09.2016 in I.A.No.585 of 2016 in O.S.No.91 of 2008 on the file of Senior Civil Judge, Narsapuram.

2. The petitioner herein is 1st defendant in the suit.
3. The suit was filed by 1st respondent for specific performance of an agreement of sale, allegedly executed by petitioner.
4. The 2nd defendant in the suit is the Andhra Pradesh State Finance Corporation from whom a loan is alleged to have been obtained and later cleared.
5. The petitioner received summons on 12.06.2008 asking him to attend the Court on 12.06.2008. He was therefore set *ex parte*.
6. Thereafter, the 2nd defendant engaged Advocate and filed written statement. Issues were framed, trial commenced and PWs.1 and 2 had been examined, and PW.3's evidence is being recorded by the Court below.
7. At that stage, the petitioner filed I.A.No.585 of 2016 to set aside the order dt.12.06.2008 setting him *ex parte* claiming that he suffered from a disease called *Parthenium Dermatitis* since 1993

which prevented him from exposing him to sun light and bulbs, that he consulted number of doctors and he is unable to move outside or to engage an Advocate since 12.06.2008. He also claimed to be suffering from an eye problem, i.e., that there is a hole in the retina in the left eye for which he underwent treatment in the MaxiVision Eye Hospital on 24.10.2013.

8. Counter-affidavit was filed by 1st respondent opposing this application and contending that petitioner's alleged illness had never prevented him from attending to social functions, performing his activities as a businessman, and traveling extensively in connection with his business. It was also stated that the documents filed by petitioner did not reveal that he was unfit to move from Hyderabad where he is residing.

9. By order dt.14.09.2016, the Court below dismissed the said application. It held that petitioner did not contradict the allegations in the counter filed by the plaintiff and the petitioner also did not state that he could not do business as Managing Director of the Kethaki Cement Private Limited. It held that the disease with which petitioner is suffering from is not such as to disable him from attending the Court on 12.06.2008 or on subsequent dates.

10. Challenging the same, the present Civil Revision Petition is filed.

11. Sri V.L.N.G.K. Murthy, learned Senior Counsel appearing for petitioner, contended that though medical fitness report of the petitioner's illness was filed before the Court below, the Court did not consider the same and was influenced by the plea of respondents that the petitioner had been doing business all the years and was traveling extensively.

12. The admitted facts of the case are that the petitioner was set *ex parte* on 12.06.2008 and he filed application to set aside the *ex parte* order on 01.06.2016, i.e., more than eight years after he was set *ex parte*. Even assuming that the petitioner was suffering from the disease in question nothing prevented the petitioner from engaging an Advocate through one of his family members, giving him a *vakalat* and instructing the Advocate to prepare a written statement which he can file and contest the suit.

13. The silence of petitioner for the period of eight years therefore cannot be explained by the respondent stating that the disease with which he was suffering did not permit him to appear before the Court. Therefore, I am not in a position to accept the contention of the counsel for petitioner.

14. I therefore do not find any error of jurisdiction in the order passed by the Court below refusing to set aside the order setting him *ex parte* on 12.06.2008.

15. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

16. However, the petitioner shall be permitted to cross-examine PWs.1 and 2 even though he is set *ex parte* in the suit as this is permitted by law.

17. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-12-2016

Ndr/*

