

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Civil Revision Petition No.590 of 2016

ORDER:-

This revision is directed against the orders of the learned Senior Civil Judge, Vizianagaram, in I.A.No.2969 of 2015 in O.S.No.129 of 2007, dated 09.12.2015 dismissing the application filed by the petitioner/defendant to reopen the suit for enabling him to adduce further evidence.

The respondent/plaintiff filed the suit for recovery of money. The evidence of the plaintiff was concluded by 30.06.2015. Thereafter, the matter was posted for the evidence of the petitioner/defendant, but on 07.07.2015, 16.07.2015, 24.07.2015, 30.07.2015 and 06.08.2015 the petitioner/defendant was not ready. Ultimately, the suit was posted to 14.08.2015 for his evidence. On the said date also since the evidence was not adduced, the right of the petitioner/defendant to lead evidence was forfeited and the matter was posted to 17.08.2015 for arguments. Immediately, the petitioner filed the application in hand contending that on 14.08.2015 even though he came to the Court and was waiting within the Court premises, his Advocate could not come and hence the order closing the evidence may be set aside.

The Court below observed that even in the past, the petitioner/defendant had been protracting the litigation and has no *bona fides* in making his representation.

Learned Counsel appearing for the petitioner/defendant submits that to say that the defendant alone is responsible for the delay in disposal of the suit is not proper and the Court below has relied upon the past conduct of the defendant in not leading the evidence.

A perusal of the record shows that the suit for recovery of money has been pending for long and even the evidence of the plaintiff concluded in June, 2015. Within two months thereafter, the right of the petitioner/defendant to lead the evidence was forfeited. The suit is for

recovery of money and it is just and proper that one more opportunity should be afforded to the petitioner/defendant to lead his evidence so as to avoid any injustice to the petitioner/defendant. Certain terms may be imposed and conditions be laid for the petitioner/defendant to conclude his evidence.

In that view of the matter, I feel that an opportunity should be afforded to the petitioner/defendant to lead evidence subject to following conditions.

In the result, the revision is allowed and the order dated 09.12.2015 is set aside subject to condition that the petitioner should pay costs of Rs.5,000/- (Rupees five thousand only) to the respondent/plaintiff on or before 03.06.2016 and complete his evidence positively by the end of June, 2016 without seeking any adjournment. If the defendant fails to fulfil the above condition, the trial Court is at liberty to pass appropriate orders for disposal of the suit.

M.S.K.JAISWAL, J

29th April, 2016
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