

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4066 of 2004

ORDER :

This Revision is filed challenging the order dt.16.04.2004 in I.A.No.657 of 1996 in I.A.No.205 of 1993 in O.S.No.926 of 1985 on the file of III Additional Chief Judge, City Civil Court, Hyderabad.

2. The petitioner herein is plaintiff in the above suit, which was filed for reliefs of declaration of title, recovery of possession and perpetual injunction in respect of certain land which is described in the schedule thereto.

3. The said suit was dismissed for default on 11.06.1990.

4. Thereafter, I.A.No.345 of 1990 was filed to set aside the said order, which was dismissed on 18.06.1992 for default.

5. Then, I.A.No.215 of 2003 was filed on 17.07.1992 to restore the earlier petition, which was also dismissed on 14.06.1994 on the ground that *batta* was not paid and there was no representation.

6. Thereafter, I.A.No.657 of 1996 was filed to condone the delay of (779) days in filing the petition under Order IX Rule 9 C.P.C. and to restore I.A.No.215 of 2003. In the affidavit filed in support of this application it is stated

that counsel, who was engaged to deal with this suit, did not give proper response and that the President of the petitioner-Society then engaged the present counsel to verify the docket proceedings and came to know about the events relating to dismissal of the suit for default, and then the present application was filed. It is also stated that the previous Presidents and Secretaries did not properly pursue the matter.

7. Counter-affidavit was filed by 7th respondent stating that O.S.No.926 of 1985, I.A.No.345 of 1990 and I.A.No.215 of 2003 were all dismissed on account of negligence and inaction of petitioner's-Society, and that the conduct of petitioner-Society shows its intention to abandon the case and give up the litigation, and it does not show any *bona fides*. It is stated that petitioner-Society cannot throw blame on its counsel for its own negligence in pursuing the matter.

8. By order dt.16.04.2004, the Court below dismissed I.A.No.657 of 1996. It held that it is the duty of petitioner to also know about the suit proceedings, and the delay cannot be totally imputed to the negligence and mistake of petitioner's counsel. It observed that proceedings had been dismissed for default thrice and there was a long delay every time in taking steps, and presently it was (779) days. It also held that the deponent of the affidavit is also a Member of the petitioner-Society

prior to his election, and at least he should have been vigilant.

9. Challenging the same, the present Revision is filed.

10. Although the counsel for petitioner sought to contend as was did in the trial court it was the negligence of the counsel who was responsible for the state of affairs in the suit, I agree with the reasoning of the trial court that it is the duty of the party also to keep track of the proceedings in the suit, and the blame cannot be entirely laid at the door of the counsel for dismissal of the suit and applications to restore the suit twice by the Court below.

11. The conduct of petitioner indicates clear negligence in the pursuit of the suit and proceedings therein.

12. Therefore, I do not find any error in the order passed by the Court below warranting interference by this Court under Section 115 C.P.C. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 11-08-2016

Ndr/*

