

HON'BLE MRS JUSTICE

ANIS

CMA NO. 733 OF 2005

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JUDGMENT :

This appeal is filed by the appellant against the order dated 18.2.2005 in I.A.No. 701 of 2001 in O.S.No. 152 of 1992 on the file of Principal Senior Civil Judge, Ranga Reddy District, L.B.Nagar, Hyderabad.

2. I.A. No. 701 of 2001 was filed by the petitioner, who is the second defendant in O.S.No. 152 of 1992 under Order 9 Rule 9 CPC to restore I.A No. 1176 of 2000 which was dismissed on 8.6.2001 on the ground that there was no representation on behalf of the petitioner when the matter was called and the said petition was dismissed and thereafter the present application was filed stating that the junior counsel was held up in some other Court and he unable to represent the matter as such the said petition was dismissed. In the counter the respondent categorically stated that the petitioner remained ex-parte and its advocate filed a petition on 30.04.1992 to set aside the ex-parte order. The said petition was also dismissed. Thereafter, he did not choose to file any petition and almost seven years thereafter he filed a petition along with

Section 5 of the Limitation Act i.e., I.A.No. 1176 of 2000 and the same was dismissed on 8.6.2001 and the petitioner is not diligent in prosecuting the case and further the petitioner also filed C.R.P.No. 450 of 2000 questioning the order of attachment passed by the Court in E.P.No. 122 of 1999 and the said petition was also dismissed.

3. Counsel appearing for the respondent submits that the petitioner with malafide intention and to avoid payments filed the present appeal and there are no merits to allow the present appeal and prayed for dismissal of appeal.

4. It is not in dispute that I.A No. 1176 of 2000 was dismissed on 8.6.2001 and the petitioner filed a petition under Section 5 of the Limitation Act for condonation of delay. The reason given by the petitioner was that he was in fact in other Court cannot be accepted. Further, the petitioner is not diligent in prosecuting the case and earlier also he was remained ex-parte on 30.04.1992 and the petitioner has not filed any petition to set aside the ex-parte order. After a lapse of long period the petitioner preferred a petition under Section 5 of Limitation Act and even that petition also not prosecuted properly and the same was dismissed on 8.6.2001. The present appeal is preferred against the order passed in I.A.No. 701 of 2001 which was filed under Order 9 Rule 9 r/w 151 CPC to set aside the dismissal order dated 8.6.2001 and to restore

I.A.No. 1176 of 2000. The only ground raised by the petitioner is that the junior counsel was in other Court and due to his absence the orders were passed. The contention of the petitioner cannot be accepted as the petitioner from the beginning is not diligent in prosecuting the case. Further decree was already passed in the year 1999 and subsequently he has not filed any appeal against the said decree. The reasons mentioned in the affidavit filed in support of the petition are not bonafide reasons to allow the appeal and to restore I.A.No. 1176 of 2000 by setting aside the dismissal order dated 8.6.2001.

5. Accordingly, Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

ANIS, J

Date: 06.04.2016
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