

HON'BLE SRI JUSTICE R. KANTHA RAO
Civil Revision Petition No.197 of 2016

ORDER:

Heard Sri Surendra Kumar, learned counsel appearing for the petitioner, Sri Narasimha Rao Davuluri, learned counsel for the 1st respondent and Sri P. Varaprasada Rao, learned counsel appearing for respondents 2 and 3.

2. This civil revision petition is filed under Section 115 of CPC against the order dated 30.01.2012 passed in IA No.863 of 2011 in OS No.308 of 2009 on the file of the Principal Junior Civil Judge, Ramachandrapuram.

3. The revision petitioner is the 1st defendant in the suit. The 1st respondent filed a suit for permanent injunction against the revision petitioner and his family members. He was represented by an Advocate in the suit. As he failed to file the written statement, he was set *ex-parte* on 18.01.2010. As he did not file written statement within 90 days, he filed a petition under Section 5 of the Limitation Act to condone the delay of 669 days in filing the petition to set aside the *ex-parte* order. It is submitted by him that after engaging an Advocate, due to ill-health, he shifted his residence from Ramachandrapuram to Hyderabad for medical assistance, in the first week of January, 2010. Again he returned to Ramachandrapuram after 1½ years and therefore, he was unable to give instructions to his counsel to file the written statement. The petition was opposed by the respondents contending that the petitioner never shifted his residence to Hyderabad. Moreover, he was prosecuting another suit i.e., OS No.90 of 2010 on the file of the District Judge, Rajahmundry in respect of the same property. Ultimately, the said suit was dismissed.

4. The learned court below considering all the aspects of the

matter, recorded a finding that no sufficient cause has been shown to condone the delay of 669 days in making an application to set aside the *ex-parte* order. The delay is crucial, because the petitioner did not file the written statement within the time stipulated by law. The suit is for mere injunction and that the wife and son of the revision petitioner have been contesting the suit. Since the petitioner filed OS No.90 of 2010 in respect of the same property before the District Judge, Rajahmundry, though seeking distinct relief, as rightly held by the learned court below no sufficient cause has been shown to condone the inordinate delay in filing the petition to set aside the *ex-parte* order.

5. Therefore, I do not find any error committed by the court below in dismissing the petition filed by the revision petitioner and the civil revision petition is dismissed. The revision petitioner/ D.1 can however participate in the proceedings before the court below in accordance with law. No order as to costs. Miscellaneous petitions, pending if any in this case, shall stand closed.

R. KANTHA RAO, J

Date: 29.01.2016
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Date: 29.01.2016

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