

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Civil Revision Petition No.6112 of 2016

Date: 30.12.2016

Between:

Rongali Gandhi

.. Petitioner

and

Sanapala Trinadhaswamy

.. Respondent

Counsel for the Petitioner : Mr.M.Ram Mohan

The Court made the following:



Order :

This Civil Revision Petition arises out of Order, dated 01.11.2016, in IA.No.303 of 2016 in OS.No.35 of 2014, on the file of the V Additional Junior Civil Judge, Visakhapatnam.

The respondent filed the afore-mentioned suit for permanent prohibitory injunction to restrain the petitioner herein from interfering with his peaceful possession and enjoyment of the plaint schedule property. The petitioner has filed written statement on 30.04.2014. Since then, the suit was being adjourned from time to time. As the affidavit in lieu of chief examination was not filed by the respondent, the case was adjourned to 24-03-2016 on payment of costs. As the respondent has not paid the costs, the case was further adjourned to 29-03-2016 and 31-03-2016. As there was no representation for the respondent and costs were not paid, the lower Court has dismissed the suit for default on 31-03-2016.

The respondent has filed an application for restoration of the suit under Order IX Rule 9 CPC along with another application under Section 5 of the Limitation Act, for condonation of delay of 79 days in filing the same. This Application was allowed by the lower Court by Order, dated

01-11-2016. Feeling aggrieved by this Order, the respondent filed this Civil Revision Petition.

Mr.M.Bala Subrahmanyam, learned Counsel for the petitioner, submitted that though the petitioner has filed a counter-affidavit opposing IA.No.303 of 2016 filed for condonation of delay, the lower Court has not assigned proper reasons.

A perusal of the order under revision shows that the delay was condoned with the cryptic observations “Costs paid. IA is allowed.”

In my opinion, the approach of the lower Court was perfunctory in that when the application for condonation of delay is contested, it is obligatory on the part of the lower Court to assign proper reasons. Be that as it may, the delay being 78 days in filing the application for restoring the suit and the lower Court having exercised its discretion in favour of allowing the application, I do not propose to interfere with the same. However, the petitioner is entitled to contest the application filed under Order IX Rule 9 CPC and in such event, the lower Court shall dispose of the same by assigning proper reasons.

Subject to the above observations, the Civil Revision Petition is dismissed.

As a sequel to dismissal of the Civil Revision Petition, CRPMP.No.8009 of 2016, filed by the petitioner for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 30th December, 2016
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