

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

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CRP.No.726 of 2016
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ORDER :
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Heard the counsel for petitioners; and Sri Sai Gangadhar Chamarty, counsel for respondent.

2. The petitioners are defendants in O.S.No.118 of 2013 filed by respondent against them for recovery of money on the basis of a promissory note.

3. An *ex parte* decree was passed against petitioners on 12.12.2014.

4. Thereafter, petitioners filed I.A.No.586 of 2015 on 18.02.2015 under Section 5 of the Limitation Act, 1963 to condone the delay of (37) days in filing the petition under Order IX Rule 13 C.P.C., and also another petition under Order IX Rule 13 C.P.C.

5. By order dt.30.11.2015, the Court below allowed the said application on condition of petitioners depositing suit costs of Rs.31,443/- on or before 30.12.2015.

6. Assailing the same, the present Civil Revision Petition is filed.

7. The counsel for petitioners contended that the suit claim is itself around Rs.9 lakhs and therefore the condition that petitioners deposit suit costs of Rs.31,443/-

as a condition precedent for considering the application under Order IX Rule 13 C.P.C. is onerous and cannot be sustained.

8. I find considerable force in the contention of counsel for petitioners.

9. Having regard to the fact that the delay in filing the petition under Order IX Rule 13 C.P.C. is only (37) days and also having regard to the quantum of the suit claim, the direction to deposit Rs.31,443/- as a condition precedent for restoration of the suit is clearly onerous. However, reasonable amount of costs can be imposed while allowing the application for condonation of delay.

10. Therefore, the Civil Revision Petition is allowed and the order dt.30.11.2015 in I.A.No.586 of 2015 in O.S.No.118 of 2013 is modified and I.A.No.586 of 2015 is allowed on deposit of costs of Rs.3,000/- to the credit of the suit on or before 31.08.2016.

11. In default of deposit of this amount to the credit of the suit by petitioners, this Civil Revision Petition shall stand dismissed.

12. The costs of Rs.3,000/- deposited by petitioners are entitled to be withdrawn by respondent.

13. Miscellaneous applications, pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 15-07-2016

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