

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2445 of 2017

ORDER:

This Civil Revision Petition is filed by the petitioner/ plaintiff under Section 115 of Code of Civil Procedure, challenging the order, dated 23-01-2017 passed in I.A.No.395 of 2016 in O.S.No.1051 of 2014 by the IX Junior Civil Judge, City Civil Court, Hyderabad, declining to condone the delay of 242 days in filing the petition to restore the suit dismissed for default under Order IX Rule 9 of C.P.C.

I.A.No.395 of 2016 in O.S.No.1051 of 2014 is filed by the petitioner for condonation of delay in filing the petition to restore the suit which was dismissed for default on the ground that petitioner counsel instructed him that unless implead petition is decided the main case will not be taken up. He also submitted that he is working as Branch Manager in United India Insurance and constantly on tours and he is Secretary to the Officer's Union, which keeps him busy in non-working hours, therefore, he could not take steps within time. The respondent disputed the cause raising several contentions mainly the cause shown by the petitioner is not sufficient cause, did not prevent the petitioner from filing petition within time and prayed for dismissal.

The trial Court upon hearing argument of both counsel dismissed the petition by order, dated 23-01-2017 disbelieving the cause shown by the petitioner and observed that the said cause is not sufficient to prevent him from filing an application.

Aggrieved by the order, the present revision is filed under Section 115 of Code of Civil Procedure on various grounds. The main ground urged before this Court is that the suit was dismissed on the ground that amendment was not carried out within time, which resulted in miscarriage of justice and passing such an order is against law and that the trial Court would have consider the cause shown by the petitioner as sufficient cause, which prevented the petitioner from filing an application to restore the suit and thus committed an error in dismissing the petition.

Learned counsel for the petitioner Sri G. Ramachandra Reddy during hearing requested that the petition may be allowed atleast on costs by fixing a date since the petitioner was busy in different duties as pleaded in the affidavit and so also on the assurance given by the counsel that unless the implead petition was disposed of, the suit would not taken up thereby he could not appear before the Court to prosecute the proceedings.

Learned counsel for the respondent Sri V. Hariharan opposed the petition on the ground that when the petitioner was able to conduct tours on all days and busy with work as Secretary of the Officers Association nothing prevented him to file a petition within time, prayed for dismissal of revision while confirming the order passed by the trial Court.

A bare look at the allegations made in paragraph No.4 of the affidavit reveals that learned counsel for the petitioner in the trial Court instructed the petitioner that unless the application for impleadment is decided the main case will not be taken up and he was also Branch Manager of United India Insurance Company, who is constantly on tours and busy with work of Officers Union being a Secretary. Thus, the admission made in paragraph No.4 of the affidavit by the petitioner that he was regularly attending the office as a Branch Manager of Insurance Company and undertaking tours in connection with his employment and at the same time he was discharging his duties as Secretary of Union of Officers of United India Insurance Company but unable to file an application contacting his counsel within the stipulated time under the Limitation Act is not sufficient cause as the petitioner was not prevented by a cause, which is beyond his reasonable control, therefore, the trial Court rightly dismissed the petition and on the other hand there is no ground to

interfere with the findings since the jurisdiction of this Court under Section 115 of Code of Civil Procedure is limited and this Court can exercise its jurisdiction only when the subordinate Court appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity, but none of the conditions laid down under Section 115 of C.P.C. are satisfied to interfere with the order passed by the trial Court since the order passed by the trial Court is purely discretionary. Therefore, I find no ground warranting interference of this Court in the order impugned in the revision and consequently the revision is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

June 30, 2017

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