

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 408 OF 2017

ORDER :

The order dated 18.12.2015 dismissing I.A. No. 498 of 2015 filed by the petitioner - defendant to reopen the suit, O.S.No. 13 of 2011 on the file of the Senior Civil Judge's Court at Kavali, was challenged in this Revision. The evidence on behalf of the defendant was closed on 08.10.2015.

O.S.No. 13 of 2011 was filed by the respondent – plaintiff on the foot of a promissory note. The case of the petitioner is that the matter was listed on 08.10.2015, on which date, he could not produce the witnesses on account of his being admitted to the hospital on 06.10.2015 as he was suffering from acute low back pain and he was discharged only on 11.10.2015.

Learned counsel for the petitioner Sri A.S.C. Bose, submits that if one opportunity is given, the petitioner would produce the witnesses on his behalf and complete the evidence within the shortest possible time, otherwise, he would suffer great damage. He further submits that disputes arose between the petitioner and the respondent on account of real estate business and in that connection, the claim was made for recovery of a sum of Rs.6,88,000/-.

Having considered the submission of the learned counsel, in the facts of the present case, it cannot be said that the Court below has erred in dismissing the Application filed by the petitioner. However, one aspect of the matter, which is disturbing, is that the petitioner had applied for a copy of the order dated 18.12.2015 on

11.03.2016, but the said Application was returned on 13.12.2016 i.e. nearly after a period of nine months, with certain objections and the same was represented on 15.12.2016. Finally the certified copy of the order was made available to the petitioner on 31.12.2016. From this, it can be said that it took 2 ½ months for the petitioner to apply for a copy of the order. In other words, the delay that can be attributed to the petitioner in filing the present Civil Revision Petition, at best, would be a period of about 2 ½ months, whereas the delay that is attributable on account of the copy application not being made available would be about nine months. If the petitioner had approached this Court at the earlier point of time, in normal circumstances, the Court would have considered the case on merits and there was always a possibility of taking a lenient view putting the petitioner on terms for granting the relief. Hence, this Court inclines to allow the Revision on terms.

The order under Revision is therefore, set aside and the Civil Revision Petition is allowed, subject to the condition of the petitioner – defendant paying a sum of Rs.10,000/- (Rupees ten thousand only) to the respondent – plaintiff within a week from today. It is made clear that the petitioner shall produce witnesses on his behalf and complete the entire evidence within four weeks from today. If the petitioner fails to comply with any of these conditions, it is needless to say, the order dated 18.12.2015 in I.A.No. 498 of 2015 stands.

The learned Senior Civil Judge at Kavali should ensure that Copy Applications are attended to at the earliest and if there is any

delay in furnishing the copies of the orders, necessary action be initiated against the personnel concerned.

Consequently, the miscellaneous Applications, if any shall stand disposed of.

Registry to, forthwith, dispatch a copy of this order to the learned Senior Civil Judge at Kavali.

CHALLA KODANDA RAM, J

03rd February 2017

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