

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.6330 of 2016

ORDER:

Heard.

2. The present civil revision petition is filed aggrieved by the order dated 27.09.2016 passed in I.A.No.421 of 2014 in O.S.No.161 of 2011 on the file of Principal Junior Civil Judge, Srikalahasthi, wherein an application filed under Section 5 of the Limitation Act to condone the delay of 78 days in filing the petition under Order IX Rule 13 of CPC was dismissed.

3. The facts in issue are as under:

The original suit was filed seeking permanent injunction in respect of suit schedule property. Initially, an *ex-parte* decree came to be passed in the said suit on 10.12.2013. Aggrieved by the order dated 10.12.2013, an application seeking to condone the delay in filing the application under Order IX Rule 13 came to be filed by the defendants on the ground that the first defendant was undergoing treatment for jaundice along with other ailments, since last ten months. After perusal of the petition affidavit and counter, the said application filed by the defendants was dismissed. Challenging the same, the present C.R.P. came to be filed.

4. Learned counsel for the petitioners would submit that he could not file application under Order IX Rule 13 of CPC within stipulated period as he was undergoing treatment for jaundice and other

ailments and the delay was neither intentional nor wanton. He further submits that the application was dismissed without giving an opportunity to contest the case and that no prejudice would be caused to the plaintiff if the delay is condoned.

5. Learned counsel for the respondent/plaintiff opposed the petition contending that the delay petition was filed only to drag on the proceedings. No proper explanation is forthcoming with regard to the delay in filing the petition under Order IX Rule 13 CPC and no proof is produced to show that the petitioner was suffering with jaundice.

6. From the explanation given by the petitioners, it is to be noted that at the stage of filing of written statement by the defendants, the first defendant went to a village near Vellore to take treatment for jaundice. It is stated that an affidavit to that effect is also filed, but however, no documents are filed to substantiate the same. Learned counsel for the petitioner would submit that since treatment given in a village is unorthodox and country made, it has become difficult for the defendants to furnish relevant medical certificate showing the treatment taken.

7. Having regard to the circumstances stated above and taking into consideration the nature of suit filed, the delay in preferring application under Order IX Rule 13 is hereby condoned.

8. Accordingly, the writ petition is allowed setting aside the *ex-parte* decree dated 10.12.2013. No costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending,
shall stand closed.

JUSTICE C. PRAVEEN KUMAR

21.04.2017
vhh

