

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.4082 of 2017

ORDER:

This Civil Revision Petition is filed by the defendant aggrieved by the order dated 12.4.2017 in I.A.No. 17 of 2016 in O.S.No. 198 of 2011 on the file of Senior Civil Judge, Proddatur, Y.S.R. District, whereunder, the said Court dismissed the petition filed by the petitioner under Section 5 of the Limitation Act to condone the delay of 48 days in filing petition under Order 9, Rule 13 CPC to set aside the ex-parte decree passed against him. The said petition was dismissed on the main ground that though it was the case of the petitioner that he sustained fracture to his right leg two days prior to the date of adjournment and thereby he underwent treatment for 45 days, he did not produce any material to establish the said fact.

2. Heard Sri V. R. Reddy Kovvuri, learned counsel for petitioner, and Sri D. Krishna Murthy, learned counsel for respondent.

3. It is the submission of the learned counsel for petitioner that the petitioner indeed suffered fracture to his right leg but in view of the fact that he underwent native treatment in Puttur Bone Setting Hospital in Chittoor District, he could not possess any record, as the said hospital did

not issue any record, and that was the reason why he could not produce any record before the Court to establish the said fact. Learned counsel would submit that in order to show the bonafides of the petitioner, he would be ready to deposit a reasonable amount out of the suit amount and on such direction, he may be given an opportunity to contest the suit.

4. Learned counsel for respondent/plaintiff opposed the petition stating that this is the second time the petitioner/defendant remained ex-parte and in fact, the decree would read as if it is on merits decree.

5. The point for determination is whether there are any merits in this Civil Revision Petition to allow?

POINT:

6. As can be seen, the suit O.S.No. 198 of 2011 is a money suit for recovery of Rs. 1,56,159/- from the defendant wherein the defendant remained ex-parte and so he filed a petition to set aside the ex-parte decree. As there was a delay of 48 days, he filed I.A.No. 17 of 2016 to condone the delay. His case was that he suffered fracture to his right leg, two days prior to the adjournment, and he underwent treatment for 45 days and in those circumstances, he could not file the set aside petition within time. The trial Court, as stated supra, dismissed the petition on the ground that no medical record was produced. Now the submission of the

learned counsel for petitioner is that in view of the petitioner undergoing treatment in a native hospital of Puttur bone setter's hospital, Chittoor District, he could not produce any record. There is nothing on record to disbelieve the said version of the petitioner. However, since this is the second occasion that the defendant remained ex-parte in the suit, the petitioner shall establish his bonafides to seek indulgence of this Court. Hence, he is directed to deposit 1/4th of the suit amount within three (3) weeks from the date of this order before the trial Court. On such condition, the Civil Revision Petition is allowed. Consequently, the order dated 12.4.2017 in I.A.No. 17 of 2016 in O.S.No. 198 of 2011 on the file of Senior Civil Judge, Proddatur, Y.S.R. District, is set aside and the said petition is allowed and the delay of 48 days in filing the set aside petition is condoned. No costs. As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 01.11.2017

KA

Note: Furnish copy in two days.