

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

C.R.P. No.671 of 2017

ORDER:

The Civil Revision Petition is arising out of order dated 17.01.2017 in I.A. No.217 of 2013 in O.S. No.12 of 2008 passed by learned Junior Civil Judge, Srungavarapukota, dismissing the application filed under Section 5 of Limitation Act for condoning the delay of 199 days in filing the application under Order IX Rule 9 C.P.C.

2) Heard arguments of learned counsel for the revision petitioner and learned counsel for the respondents.

3) The case of the revision petitioner is that he filed the suit for permanent injunction against the respondent. On 18.06.2012, the suit came up for hearing, but the petitioner could not prosecute the case, therefore the suit was dismissed for default. The petitioner filed the present petition to condone the delay of 199 days in filing the application to set-aside the dismissal order.

4) The trial Court, on consideration of the arguments of both parties, passed an order on 17.01.2017 stating that there is no sufficient cause shown to condone the delay of 199 days as the petitioner was not diligent in prosecuting his case and the reasons mentioned by him are not correct.

5) Learned counsel for the petitioner submitted that the petitioner is resident of Hyderabad and that he could not contact his previous counsel due to communication gap and the petitioner is having strong case to succeed in the suit and therefore sought

for condoning the delay of 199 days in filing the petition for setting aside the dismissal order under Order IX Rule 9 C.P.C.

6) Learned counsel for the respondents submits that the petitioner was not vigilant in pursuing his case right from the beginning and on several occasions he was not present after filing the chief affidavit, hence the trial Court dismissed the suit. It is his further submission that the statement made by the petitioner that he is residing at Hyderabad is not correct and he has not filed any proof to that effect.

7) Learned counsel for the petitioner, in reply, submits that in the cause title, the address of the petitioner has been shown as Hyderabad and that it was only due to communication gap, the petitioner could not contact his previous counsel.

8) It is obvious that the petitioner is not diligent in prosecuting the case and he had taken several adjournments after filing the chief affidavit reporting to be 'not ready' and the Court has also imposed costs. No doubt, to some extent, the trial Court is right in observing that the petitioner is not diligent in prosecuting his case. However, as it is stated that there was communication gap between him and his previous counsel, as such his counsel could not prosecute the case and has got good grounds to succeed the case, in the interest of justice, the delay of 199 days is condoned on payment of costs of Rs.3,000/- (Rupees three thousand only) payable to respondent before the trial Court within two weeks from the date of receipt of a copy of this order and on condition of the petitioner getting ready for cross examination and also production of all his witness on the next date

of hearing to be fixed by the trial Court. The trial Court is directed to dispose of the suit within three months from the date of receipt of a copy of this order.

9) With these observations, the C.R.P is disposed of. No order as to costs.

10) Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

Date:20.04.2017
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