

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.2786 of 2017

ORDER :

This Revision is filed challenging the order dt.03.04.2017 in I.A.No.85 of 2016 in O.S.No.93 of 2014 on the file of Junior Civil Judge, Chintalapudi.

2. The petitioners herein are defendants in the said suit, which was filed by respondents for perpetual injunction against them, restraining the petitioners from interfering with the alleged possession and enjoyment of the plaint schedule property.

3. Summons were served on the petitioners and for filing written statement, the matter was posted to 28.11.2014, 12.12.2014, 24.12.2014, 20.01.2015, 09.02.2015 and 20.02.2015, and all the last three adjournments were granted on payment of costs.

4. The petitioners also engaged a Counsel by name Sri Y. Rajendra Prasad, and since neither Counsel nor petitioners were present on 20.02.2015, they were set *ex parte*; and thereafter, *ex parte* decree was passed on 06.03.2015.

5. On 07.07.2015, the petitioners filed an application under Section 5 of the Limitation Act being I.A.No.85 of 2016; and another application to set aside the *ex parte* decree passed on 06.03.2015, enclosing an affidavit of the 1st petitioner that petitioners were not well-versed in the legal proceedings; and due to prolonged sickness on

account of old age the 1st petitioner, who was authorized by the others to represent the case, did not contest the same; and there was a communication gap in representing the case.

6. This application was opposed by the respondents stating that the application contains only a vague statement about the ill-health without any certificate from a qualified doctor for the same; and that there is no sufficient cause shown for condoning the said delay.

7. By order dt.03.04.2017, the Court below dismissed the said application noting that even if the 1st petitioner was old and was otherwise sick, nothing prevented the other petitioners from attending the Court and representing their case through their Counsel; that the 1st petitioner should have asked the other petitioners to represent the case either in person or through Counsel; and that the period the 1st petitioner suffered from sickness is not stated.

8. Challenging the same, the present Civil Revision Petition is filed.

9. The counsel for petitioner contends that the Court below ought to have condoned the delay in filing the application to set aside the *ex parte* decree accepting the reasons given by the petitioners.

10. The facts narrated above indicate that summons were served on the petitioners; that they engaged an Advocate also and in spite of six adjournments having been granted to them, they did not file the written statement.

11. No evidence has been filed about the illness of the 1st petitioner, and even assuming that he was sick, nothing prevented the other petitioners from representing the case either in person or through Advocate.

12. Therefore, I see no reason to interfere with the impugned order passed by the Court below.

13. Accordingly, the Civil Revision Petition is dismissed at the stage of admission. No order as to costs.

14. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-06-2017

Ndr/*

