

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

C.R.P.No.5320 of 2006

ORDER:

This Civil Revision Petition is filed against the orders dated 17.6.2006 passed in CMA.No.193 of 2004 by the III Additional Chief Judge, City Civil Court, Hyderabad, dismissing the appeal. The appeal arises out of I.A.No.661/1996 in O.S.No.1011/1987 dated 2.1.2004.

Initially, O.S.No.1011/1987 was filed by the petitioner/Plaintiff. The petitioner was set *ex parte* and the suit was dismissed for default on 13.2.1996. The averments made in the affidavit therein are that the deponent reached the Court late at 12.00 noon because of the traffic jam. Since he was not present at 10.30 am, he was set *ex parte* and the suit was dismissed. Thereafter, he filed I.A.No.661/1996 in O.S.No.1011/1987 under Order 9 Rule 9 CPC requesting the Court to set aside the dismissal order dated 13.2.1996. I.A.No.661/1996 was also dismissed by the lower Court by orders dated 2.1.2004 holding that filing of an application one month later is proof of the fact that the averments in the affidavit are not correct. The past conduct of the petitioner was analysed and the application was dismissed. The same was carried in appeal by way of CMA.No.193 of 2004 and that appeal also met with the same fate. The Court held that the advocate sought for an adjournment and it was refused, whereas in the affidavit it was stated that the petitioner who is on his way to the Court was struck in the traffic.

Learned counsel for the petitioner argued and relied upon the judgments of this High Court in **Chapiri Kuderu Shakshavali v. Shaik Isthak Ahamed¹** and **Garuda Sakuntala v. A.V.M.Jagga Rao²** wherein this Court held that prior conduct of the petitioner should not be taken

¹ 2016 (1) ALT 735

² 2000 (6) ALD 634

into account while recording a finding on the date on which the petitioner did not appear in the Court. This Court is satisfied that the explanation given is satisfactory and the earlier conduct of the petitioner would not be relevant to decide the issue. Learned counsel for the respondent did not really object to the averments made all though he sought time to argue the matter.

For all these reasons, the revision petition is allowed and the judgment dated 17.6.2006 in CMA.No.193/2004 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad, is set aside and the suit is restored to file.

Miscellaneous Petitions pending, if any, in this petition shall stand closed no costs.

D.V.S.S.SOMAYAJULU,J

Date: 31/01/2018
lkv

