

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.3322 of 2017

ORDER :

This Revision is filed challenging the order dt.11.04.2017 in I.A.No.529 of 2016 in O.S.No.54 of 2015 on the file of Junior Civil Judge, Jangareddigudem, West Godavari District.

2. The petitioners are defendants in the above suit.
3. The suit was filed by respondent against petitioners for recovery of money.
4. The petitioners received the summons and engaged a counsel also.
5. Thereafter, they were set *ex parte* on 01.09.2015 since they did not file any written statement. The suit was later decreed *ex parte* on 30.10.2015.
6. On 18.11.2016, petitioners filed an application under Order IX Rule 13 C.P.C. to set aside the *ex parte* decree and another application I.A.No.529 of 2016 to condone the delay of (355) days in filing the petition to set aside the *ex parte* decree.
7. In the said application, they stated that the 1st petitioner was looking after the affairs of the suit; that the 1st petitioner was suffering from Jaundice and went to Srikakulam to get *Pasara Vaidyam*, and that therefore, he could not meet the Advocate and contest the suit.

He stated that subsequently he came to the village and the Advocate told him about the suit and then he prepared written statement.

8. Counter-affidavit was filed by respondent opposing the said application stating that no reasonable ground is shown by the petitioners for condoning the said delay, and that the story of the 1st petitioner suffering from Jaundice and going to Srikakulam for treatment of the same, is not correct.

9. By order dt.11.05.2017, the Court below dismissed the said application. It noted that the 1st petitioner did not file any evidence of his undergoing treatment for Jaundice at Srikakulam; that the 2nd petitioner is his younger brother; why the 2nd petitioner, who was very much available and present in the village, did not pursue the matter and get prepared written statement, is not stated by the petitioners; that after the petitioners were set *ex parte* on 01.09.1995, after forfeiting their right to file written statement, the suit had been adjourned on four occasions before passing the judgment on 30.10.2015; and since the petitioners did not show proper diligence, the delay cannot be condoned.

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

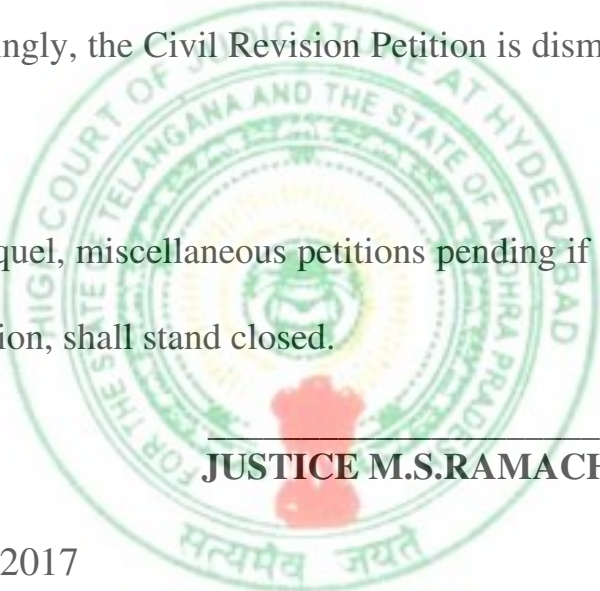
11. Though counsel for petitioners sought to contend that the delay ought to have been condoned by the Court below, the facts stated in the impugned order show that the petitioners had engaged an counsel

but did not instruct him to prepare a written statement. Even if the 1st petitioner was unwell and had gone to Srikakulam, no reason is assigned why the 2nd petitioner did not contact the Advocate for instructions to file written statement. Clearly, the petitioners had been negligent and so the Court below was right in dismissing the said I.A.

12. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference under Article 227 of the Constitution of India.

13. Accordingly, the Civil Revision Petition is dismissed. 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: 21-07-2017

Ndr/*