

THE HON'BLE SRI JUSTICE M.GANGA RAO

C.R.P. NO.324 OF 2013

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 (for short 'CPC'), is filed being aggrieved by the order dated 19.06.2012 passed by learned I Additional Junior Civil Judge, Visakhapatnam, in I.A.No.9 of 2012 in O.S.No.785 of 2011 whereby the learned the Judge dismissed the application filed by the petitioner under Order XI Rule 4 of CPC seeking to set aside the order dated 17.10.2011 dismissing the suit for default and to restore the suit to its file.

2. Heard the learned counsel for the petitioner. Notice sent to the sole respondent returned un-served.

3. The main contention urged by the learned counsel for the petitioner is that the suit is filed by the petitioner against the respondent for recovery of a sum of Rs.36,000/- together with subsequent interest @ 24% per annum. While so, the trial Court on 10-10-2011 adjourned the suit to 17.10.2011. On that day, as the petitioner was out of station, he could not file the petition and also not made any representation on his behalf. Therefore, the Court below dismissed the suit for default. Later, the petitioner filed I.A.No.9 of 2012 under Order XI Rule 4 CPC for setting

aside the dismissal order. The petitioner averred in that petition that non filing of the petition for taking steps and non representation on that day is neither wilful nor deliberate.

4. The Court below, after hearing the counsel for the petitioner, dismissed the petition observing that the suit was dismissed on 17.10.2011 whereas the restoration petition was filed on 18.11.2011 and thereby the petition is barred by limitation and that there are no tenable reasons explained by the petitioner for not filing the steps petition against the defendant on 17.10.2011.

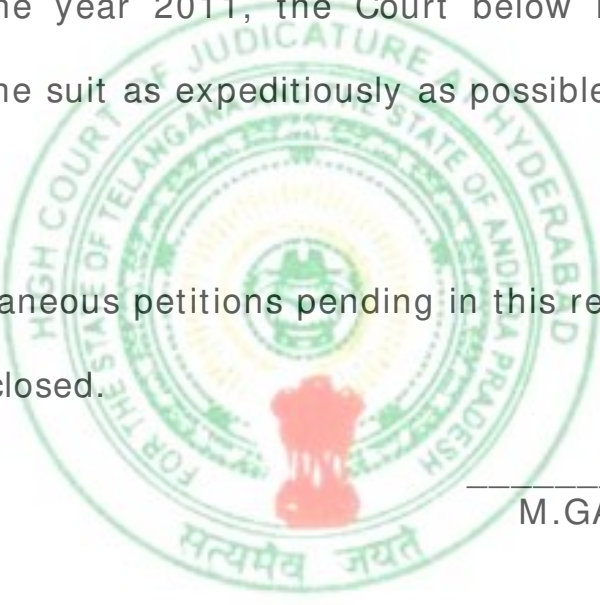
5. Evidently, the suit is one relating to recovery of sum of Rs.36,000/- together with subsequent interest @ 24% per annum. There are no *mala fides* in getting the suit dismissed. The law is now fairly settled that when the right of the parties, with regard to money suits, are involved, a liberal approach has to be taken by the Courts for restoration of suit, which was dismissed for default.

6. In the above circumstances and in view of the fact that the delay in filing the petition is only one day after prescribed period of limitation of 30 days, as enunciated in Section 5 of the Limitation Act,1963, and the reason for non-appearance is explained, the Court below ought to have allowed the request of the petitioner. Hence, to meet

the ends of justice and in order to give an opportunity to the petitioner-plaintiff to pursue his suit, this Court is of the view that the impugned order is liable to be set aside.

7. Accordingly, the Civil Revision Petition is allowed by setting aside the order dated 19-06-2012 passed by learned I Additional Junior Civil Judge, Visakhapatnam, in I.A.No.9 of 2012 in O.S.No.785 of 2011 and the suit is restored to its file. Further, since the suit relates to recovery of money and is of the year 2011, the Court below is directed to dispose of the suit as expeditiously as possible. No order as to costs.

8. Miscellaneous petitions pending in this revision, if any, shall stand closed.



M.GANGA RAO, J

13.10.2017
TSNR