

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

CMA No.615 of 2008

JUDGMENT:

This appeal is filed against the order, dated 06.07.2007, passed by the learned Junior Civil Judge at Huzurnagar in I.A.No.150 of 2007 in I.A.No.2 of 2006 in O.S.No.130 of 2003.

The appellant/petitioner is the second defendant in the suit. I.A.No.2 of 2006 was posted to 22.03.2007 for arguments. On that day, as per the averments of the affidavit, the senior counsel appearing for her went to Hyderabad for medical check up and therefore, he could not advance the arguments. The Court below dismissed I.A.No.2 of 2006 for default. Hence, I.A.No.150 of 2007 is filed stating that the senior counsel went to Hyderabad for medical check up and as such he could not present. The respondents filed a counter strongly opposing the said application and also alleging that the Advocate, who went to Hyderabad for a medical check up, did not file his own affidavit supporting the contents of the application.

The Court below by a cryptic order, dated 06.07.2007, dismissed I.A.No.150 of 2007 holding that no affidavit is filed by the counsel to show that he went to Hyderabad for a medical check up. It is this order that is impugned in the present appeal.

Heard learned counsel for the appellant and learned counsel for the respondents. The learned counsel for appellant argued that his case is genuine, while the learned counsel for the respondents that there is delay due to the defendants.

The trial Court, in the opinion of this Court, took a hyper-technical view in the matter. The party has come on record and has within a reasonable time from the date of dismissal order filed I.A.No.150 of 2007 to restore I.A.No.2 of 2006. If the view taken by the trial Court is upheld, it will lead to lot of practical difficulties. To expect the counsel to give an affidavit to support the affidavit of his client is not countenanced by law.

The delay in disposing of the matter and taking a hyper-technical view may often result in just cause being thrown away at the threshold. The party is entitled to a decision on merits. In the process of disposal, justice should not be denied. Therefore, I am of the opinion that the order passed by the Court below is not valid or tenable.

Hence, the appeal is allowed and the order under appeal is set aside. Consequently, I.A.No.150 of 2007 is allowed. It is made clear that the trial Court should not be liberal in granting adjournments in this case and should proceed with the matter on a priority.

Miscellaneous petitions, if any, pending in this appeal shall stand disposed of. There shall be no order as to costs.

D.V.S.S.SOMAYAJULU,J

Dt:09.11.2017
kdl