

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

CRP.No.5418 of 2016

ORDER:

This Revision is filed challenging the order dt.21.09.2016 in I.A.No.138 of 2013 in O.S.No.22 of 2003 on the file of IV Additional District Judge, Tanuku.

2. The petitioner herein is plaintiff in the above suit, which she had filed for specific performance of an agreement of sale, or alternatively for refund of purchase money with interest and damages.

3. She engaged a counsel to represent her in the Court. The said suit, which was initially filed in the District Court, at Eluru, was later transferred to the Additional District Court, Tanuku. It was dismissed for default on 24.08.2011.

4. On 26.02.2013, she filed an application under Section 5 of the Limitation Act, 1963 to condone the delay of (530) days in filing the petition to set aside the order dt.24.08.2011 dismissing the suit for default. She contended therein that she came to know about this order in December, 2011; that on the date of dismissal of the suit for default, she had delivered a female child at Narsapur; that she approached the Advocates who were on record thereafter and questioned them why they did not inform her about the dismissal of the suit for default; that the said Advocates did not give the record and

insisted for payment of heavy fees; that she later engaged another counsel for filing petition for restoration in March, 2012, but he did not file application under Order IX Rule 9 C.P.C. to restore the suit.

5. Counter-affidavit was filed by respondent nos.2 and 3 opposing this application stating that petitioner was not at all diligent and interested in pursuing the case. It was pointed out that in the affidavits filed in certain I.A.s she mentioned that she was staying in Hyderabad and in certain other affidavits she had stated that she was staying at Narsapur, and in any event, the petitioner should have pursued the matter instead of throwing the blame on the Advocates. It was further pointed out that if the petitioner had knowledge about the disposal of the suit in December, 2011 she ought not to have filed this application on 26.02.2013, and this shows that petitioner's conduct is not *bona fide*.

6. By order dt.21.09.2016, the Court below dismissed the said application. The Court below held that the conduct of petitioner showed that she deliberately neglected the proceedings for her personal reasons; that she changed Advocates more than once; and she cannot be allowed to throw the blame on the Advocate for her non-appearance in the Court, since it was her bounden duty to follow up with the Advocates and ensure that the suit is decided expeditiously.

7. Challenging the same, the present Revision is filed.

8. Sri K. Chidambaram, counsel for petitioner, contends that the suit involves substantial stakes and that the petitioner had underwent surgery on the date on which the suit was dismissed for default, which was also supported by a certificate issued by a Doctor, and therefore, she cannot be blamed for not being present when the suit was dismissed for default on 24.08.2011.

9. While it is true that petitioner could not have been expected to be present on the day when she underwent surgery, it might be a ground for restoring the suit if the petitioner had approached the Court within a reasonable time for its restoration. The fact remains that she filed an application for condonation of delay in filing application under Order IX Rule 9 C.P.C. on 26.02.2013, in spite of the fact that she was aware about the dismissal of the suit in December, 2011.

10. The petitioner is admittedly married and she also has a brother. Even if the petitioner had family responsibilities and could not personally deal with Advocates, her husband and brother could have been requested to pursue the matter with the Advocates and ensure that application for restoration of the suit is filed expeditiously.

11. Conveniently, the petitioner has thrown the blame on several Advocates engaged by her from time to time without owning up any responsibility for her negligent conduct in not taking steps to seek restoration of the suit within reasonable time from the date it was

dismissed for default, or when such dismissal came to her knowledge in December, 2011.

12. Therefore, I do not find any error of jurisdiction passed by the Court below in refusing to condone the delay of (530) days in seeking restoration of the suit.

13. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

14. Miscellaneous petitions, pending if any in this Civil Revision Petition, shall stand closed.

Date: 10-02-2017
Ndr/*

JUSTICE M.S. RAMACHANDRA RAO

