

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.4755 of 2017

ORDER :

This Revision is filed assailing the order dt.26-07-2017 in I.A.No.1357 of 2015 in O.S.No.423 of 2012 of the Principal Senior Civil Judge at Kovvur.

2. The petitioners are defendants in the said suit.
3. The said suit was filed for recovery of money by respondent against petitioners on the basis of a promissory note.
4. Summons in the suit were served on petitioners and they entered appearance through an Advocate and also filed written statement on 21-01-2013. Subsequently trial commenced and plaintiff was examined as P.W.1 and thereafter petitioners failed to put in appearance. On 12-02-2015 they were set *ex parte* and on 26-02-2015 *ex parte* decree was passed.
5. On 02-11-2015 petitioners filed I.A.No.1357 of 2015 under Section 5 of Limitation Act to condone the delay of 216 days in filing application to set aside the *ex parte* decree and I.A.No.1358 of 2015 to set aside the *ex parte* decree dt.26-02-2015.
6. In the affidavit filed in support of the said application, it was contended that 1st petitioner's wife died on 16-10-2014 in NIMS Hospital, Hyderabad, that 1st petitioner was under shock, that his health was not good as he was a chronic diabetic patient and also having hypertension and he was on insulin medication. He stated that

his younger son was also suffering from T.B. and got admitted in hospital and a surgery had to be conducted. He stated that for these reasons he could not contact his counsel and could appear before the Court.

7. Counter-affidavit was filed by respondent opposing condonation of delay. He contended that there is no sufficient cause for condonation of the said period of delay.

8. Before the Court below, though no oral evidence was adduced, petitioners marked Ex.P-1 medical certificate issued by Dr.Sandhya of Nanomedix, Hyderabad dt.23-06-2015 and Ex.P-2 death certificate of the wife of 1st petitioner.

9. By order dt.26-07-2017, the Court below dismissed both the applications. It observed that 2nd petitioner did not assign any reason for his absence before the Court or for prosecuting the suit. As regards the 1st petitioner, it observed that according to the 1st petitioner, on 15-06-2015, he came to know about the decree and thereafter he obtained Ex.P-1 certificate on 23-06-2015, but filed the above applications on 02-11-2015. It held that there is no reason assigned by petitioners for the delay in filing these petitions between 23-06-2015 and 02-11-2015 and that they did not assign reason why they could not prosecute the suit.

10. Assailing the same, this Revision is filed.

11. Learned counsel for petitioners contends that great and irreparable loss would be caused to the petitioners if the delay of 216

days in filing the application to set aside the *ex parte* decree, is not condoned. He contended that valid reasons showing sufficient cause for delay in filing the applications were indicated and the same should have been accepted by the Court below.

12. As stated by the Court below, there is no explanation forthcoming from the 1st petitioner for the delay in filing the petitions between 23-06-2015, the date on which he obtained Ex.P-1 certificate, till 02-11-2015, when these applications are filed. There is also no explanation at all from the 2nd petitioner as to the cause for the delay in filing the applications. Therefore the Court below could not be said to have erred in dismissing the applications. I see no reason to interfere with the order passed by the Court below in dismissing these applications.

13. Accordingly, the Civil Revision Petition is dismissed at the stage of admission. No costs.

14. Miscellaneous applications pending if any in this Revision shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 13-10-2017

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