

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.5243 OF 2017

ORDER:

Aggrieved by the order dated 10th August, 2016 in I.A.No.680 of 2015 in O.S.No.134 of 2015 passed by the learned Senior Civil Judge, Gadwal, dismissing the petition filed by the petitioner-defendant to condone the delay of 150 days in filing the petition to set aside the exparte decree dated 3-6-2015, the defendant is before this court in this C.R.P.

O.S.No.134 of 2014 is filed by the respondent/plaintiff seeking money decree on the strength of promissory note said to be executed by the defendant. The defendant put up his appearance and thereafter, it appears when he failed to file written statement, he was set exparte. In filing the petition to set aside the decree, there has been delay of 150 days and hence, petitioner/defendant filed I.A.No.680 of 2015 to condone the delay. His plea was that he was suffering from Cancer and undergoing treatment in Indo-American Cancer Institute & Research Centre, Hyderabad during the relevant period and therefore, he could not contact his counsel to give instructions to file the written statement and in the meanwhile, he was set exparte.

Respondent/plaintiff filed counter and opposed the petition.

The trial court dismissed the petition on the main observation that no record was produced by the petitioner to show that he was hospitalized on 3-6-2015 on which date he was set exparte. The trial court held that there were no bonafide grounds to condone the delay.

In the C.R.P. notice served on the respondent/plaintiff but there is no representation.

Heard the learned counsel.

It is the submission of learned counsel for the petitioner that unfortunately during the enquiry of I.A.No.680 of 2015, the petitioner could not produce all his medical record showing his hospitalization and undergoing treatment during the relevant date i.e., 3-6-2015 and hence, an opportunity may be given to him to produce his medical record before the trial court and prayed to set aside the impugned order in the interest of justice.

Considering the fact that the suit is filed for recovery of huge amount of Rs.1,65,000/- and odd wherein the valuable right of defendant is at stake and also considering that the plea of the defendant that due to hospitalization and undergoing treatment, he could not file his written statement, this C.R.P. is allowed by setting aside the impugned order. The trial court is directed to permit the petitioner to produce his medical record in his attempt to show that he was hospitalized and undergoing treatment during the relevant period when he was set exparte. The trial court after hearing both sides shall pass an order in I.A.No.680 of 2015 in O.S.No.134 of 2014 afresh on merits.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE U.DURGA PRASAD RAO

Dated 18th December, 2017.

Dvs

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO



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Dvs