

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.4914 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the unsuccessful respondent/defendant assailing the order, dated 01.09.2017, of the learned II Senior Civil Judge, City Civil Court, Hyderabad, passed in I.A.No.406 of 2016 in O.S.No.807 of 2011.

2. I have heard the submissions of Sri K. Ravi Mahender, learned counsel for the petitioner/defendant.
3. I have perused the material record.
4. The facts, which are necessary for disposal of this Civil Revision Petition, are as follows:

The suit of the plaintiff was dismissed for default, on 14.07.2016. Within the time allowed under law, the plaintiff filed an application with a request to set aside the said order and restore the suit to file. The respondent filed a counter resisting the application. On merits and by the order impugned, the trial Court allowed the petition subject to payment of costs. After receiving the costs under protest, the aggrieved defendant preferred this revision.

5. To begin with, it is to be noted that the plaintiff, in support of his request to set aside the order of dismissal for default made in the suit, stated in his affidavit that on the day the suit was posted for cross-examination of PW1, he came to the trial Court, but learnt that Advocates were boycotting the Courts and not allowing anybody into the Court hall; and that they blocked the entrance to the Court hall from all sides and that, therefore, his counsel advised him to make a request at the entrance to go into the Court hall and attend the Court proceedings; but, there was a chaos at the entrance of the Court hall; and, therefore, he could not reach the Court hall by the time the matter was called; and, hence, the suit was dismissed for default for his absence as well as absence of his counsel.

6. The case of the defendant-petitioner herein is this: 'The plaintiff is not interested in proceeding with the trial of the suit. Even by the day, the matter was posted for cross-examination, he also knows that the Advocates were boycotting the Courts at the relevant time; therefore, he ought to have been more cautious and ought to have attended the Court in time. Further, during pendency of the suit, he filed an application for amendment of the pleadings and delayed the disposal of the suit. Even earlier, the plaintiff went on a pilgrimage and did not prosecute the suit with diligence. When he went on a pilgrimage, the petitioner/plaintiff

ought to have made alternative arrangement for progress of the suit proceedings during his absence from the country. He failed to do so. Thus, the plaintiff is dragging on the matter. The suit was earlier dismissed, on 13.06.2012, for non-prosecution and was later restored. The plaintiff's conduct shows that he is not diligent and he is not interested in prosecution of the suit and that he is interested in only dragging on the suit.'

7. At the hearing, while reiterating the case of the petitioner/defendant, which is already stated supra, the learned counsel for the petitioner/defendant brought to the notice of the Court, the chronological events, which are stated in the counter, and which lead to the dismissal of the suit earlier and which reflect the conduct of the plaintiff in dragging on the matter. He would further submit that in view of the aforesaid conduct of the plaintiff and his attitude in dragging on the matter, the trial Court ought to have dismissed the petition seeking restoration of the suit to file.

8. It is to be first noted that the previous conduct of the plaintiff is not relevant for consideration while this Court considering the explanation which the plaintiff has offered for his non-appearance before the trial Court on 14.07.2016 i.e., the date on which the suit was dismissed for default. As per the law well settled, while considering the merits of an application filed for

restoration of a suit, which was dismissed for default, the Court has to only consider the valid reasons, if any, for non appearance of the plaintiff and counsel on the day on which the suit was dismissed for default; but, the Court cannot take into consideration the aspect of the plaintiff's non appearance on previous dates of adjournments and cannot stretch the matter to cover circumstances which had occurred prior to the date on which the suit was dismissed for default as the said conduct prior to the said date stands overlooked and condoned.

9. Coming to the adequacy of the explanation, on perusing the affidavit and also the explanation offered which is stated supra, this Court is satisfied that sufficient cause is shown by the plaintiff for the plaintiff's absence before the trial Court, on the date the suit was dismissed for default.

10. In that view of the matter, this Court finds that there are no tenable objections in the counter of the defendant and that the trial Court is justified in passing the impugned order.

11. On the above analysis, this Court finds no merit in this Civil Revision Petition and accordingly holds that the Civil Revision Petition is liable to be dismissed.

12. Accordingly, the Civil Revision Petition is dismissed.

No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

19th SEPTEMBER, 2017.

kvni

