

THE HON' BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.6873 OF 2017

ORDER:

This revision is filed by the petitioner/ plaintiff, aggrieved by the order dated 01.11.2017 in I.A.No.353 of 2017 in O.S.No.3148 of 2015 passed by the IV Junior Civil Judge, City Civil Court, Hyderabad.

2. Heard both sides.

3. Proof of service of notice as to the advocate on record in the lower Court shows item delivered, is a sufficient service. Postal endorsement of notice shows it is served on the Commissioner, Greater Hyderabad Municipal Corporation (for short 'G.H.M.C.'), Hyderabad. Hence, taken as heard the respondent/ G.H.M.C. Heard the learned counsel for the revision petitioner and perused the grounds urged in the revision and the impugned order dated 01.11.2017 in I.A.No.353 of 2017 in O.S.No.3148 of 2015, which is an application under Section 5 of the Limitation Act for the 17 days delay in filing the default dismissal set aside order of the suit dated 26.07.2017, that was since dismissed by the learned IV Junior Civil Judge in saying there are no bonafide reasons to allow, this revision is maintained.

4. The contentions in the grounds of revision vis-à-vis oral submissions of the learned counsel for the petitioner are that it is due to oversight, there is wrong noting of the date of posting, on

the date of posting could not appear and subsequently, came to know on the verification, thereby, delay is occurred, thereby, non appearance for default dismissal is neither wilful nor wanton and the lower Court ought to have seen in allowing the application for the reason even the respondent not even chosen to file counter in I.A.No.353 of 2017 apart from the very affidavit petition to condone the delay of 17 days, shows sufficient cause which is referred supra.

5. Having regard to the above and from the pragmatic approach likely to be adopted, the delay is condoned by allowing the revision with a direction to the lower Court to take up the application under Order IX Rule 9 C.P.C. of the suit for restoration or otherwise on merits.

6. Accordingly, the Civil Revision Petition is allowed.

7. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. There shall be no order as to costs.

Date: 21.12.2017
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DR. B. SIVA SANKARA RAO, J