

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.NO.398 OF 2018 AND CMA.NO.59 OF 2018

COMMON ORDER

Revision petitioner and the appellant in both the cases, is one and the same and he is the plaintiff in the suit. He filed suit in O.S.No.63 of 2010 on the file of V Additional Sessions Judge, Tirupati, for declaration of tile and for permanent injunction. The said suit was dismissed for default, vide order and decree dated 25.06.2015. To set aside the said order, and to restore the suit to file, plaintiff filed I.A.No.33 of 2016 in O.S.No.63 of 2010 under Order 9 Rule 9 read with Section 151 CPC. As there is delay of 165 days in filing the Order 9, Rule 9 CPC application, plaintiff filed I.A.No.32 of 2016 in O.S.No.63 of 2010, under Section 5 of the Limitation Act, 1963 to condone the delay. By order and decree dated 08.12.2017, the court below dismissed the delay condone petition. Consequently, I.A.No.33 of 2016 in O.S.No.63 of 2010, filed under Order 9 Rule 9 of CPC, was also dismissed on 8.12.2017. Aggrieved by the dismissal of the delay condone petition, plaintiff filed C.R.P.No.398 of 2018 and against the dismissal of Order 9, Rule 9 CPC application, CMA.No.59 of 2018, is filed.

For the sake of convenience, parties will be referred to as petitioner and defendants.

Learned counsel appearing for the petitioner/plaintiff, submits that as the petitioner was suffering from Lambosacral Spondilites and Sciatica, he took treatment from 20.06.2015 to 05.01.2016 and he produced the certificate issued by the doctor, but the trial court, though referred the same in the impugned order; on presumptions and assumptions, held that the medical certificate filed by the petitioner appears to be fabricated. Learned counsel submits that the suit is filed for declaration of tile and for

perpetual injunction and as the valuable rights of the petitioner in immovable property, are involved, the trial court ought to given him opportunity on terms. Therefore, he sought to condone the delay and to allow the application filed under Order 9, Rule 9 of CPC, and to restore the suit to file.

On the other hand, the learned counsel appearing respondents / defendants vehemently opposing the above contentions, submitted that though the petitioner filed the medical certificate, failed to examine the doctor to prove the veracity of the same. He states that the averments made in the affidavit filed in support of the delay condone application, are vague and the finding recorded by the trial court that the medical certificate produced by the petitioner appears to be fabricated, cannot be interfered with by this court under the revisional jurisdiction. With these contentions, he sought to dismiss the revision and the appeal.

In this case, it is to be seen that though the averments made in the affidavit filed in support of the delay condone application, are not satisfactory, petitioner produced the medical certificate issued by the doctor. Normally, the applications under Section 5 of the Limitation Act, 1963, are decided based on averments made in affidavit and material produced along with it and only in some cases, where the delay is abnormal, evidence would be let in. In the present case, certificate of doctor is filed, which is also referred to in the impugned order.

The suit is filed for declaration of title and for perpetual injunction and as per the averments made in the affidavit filed in support of the delay condone petition, it could be seen that the plaintiff filed affidavit in lieu of chief-examination and that though he was present before the court on two to three occasions for the purpose of cross-examination,

defendants took time and the petitioner, who is aged about 64 years, claims to be suffering from the above stated ailment during the relevant period. In these facts and circumstances and having regard to the nature of the suit and in the interest of justice, this court is of the view that the trial court ought to have condoned the delay on certain terms.

Accordingly, the delay of 165 days in filing application under Order 9, Rule 9 CPC is condoned and consequently the said application is allowed and the suit is restored to file and the impugned orders dated 8.12.2017 in I.As.No.32 and 33 of 2016 in O.S.No.63 of 2010, are set aside, subject to the condition of petitioner paying costs of an amount of Rs.10,000/- (Rupees ten thousand only) to A. P. State Legal Service Authority, Hyderabad, within a period of four weeks from today.

It is made clear that in case of default in payment of the above stated amount, within the period stipulated, the impugned orders would stand restored.

As the suit is of the year 2010, the trial court shall dispose the same in accordance with law, within a period of six months from the date of receipt of a copy of this order, and it is needless to observe that both the parties shall co-operate for the disposal of the suit within the stipulated period.

The revision and the appeal are accordingly disposed of.

Interlocutory applications pending, if any, shall stand closed.

A.RAJASHEKER REDDY,J

DATE:23—11—2018

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