

HONOURABLE SRI JUSTICE N. BALAYOGI
CIVIL REVISION PETITION No.4021 of 2012

ORDER:

Having received notice in main Civil Revision Petition, none appeared or represented the matter for the respondents. Since the Suit is of the year 2006, heard the C.R.P.

2. The petitioner / plaintiff, aggrieved by the common order dated:29.3.2012 in I.A.No.354/2010 in O.S.No.399 of 2006 and I.A.No.355/2010 in O.S.No.399 of 2006, preferred this Revision Petition.

3. The contention of the petitioner/plaintiff is that the delay occurred in ascertaining correct addresses of the respondents, but the Trial Court erroneously dismissed the petitions holding that day-to-day delay was not explained technically.

4. Now, the point that arose for determination is:

“Whether the common order dated:29.3.2012 in I.A.No.354/2010 in O.S.No.399 of 2006 and I.A.No.355/2010 in O.S.No.399 of 2006 suffers from legal infirmities warranting interference in this Revision?”

5. The undisputed facts spell out from the record as well as mentioned in the petition and in the impugned order are that the petitioner/plaintiff-Chit Fund Company filed the Suit for recovery of money. The said Suit was dismissed for default for non-payment of process on 13.11.2007.

Contd..P.2.

6. Admittedly, there is a delay of 906 days. The Petition-I.A.No.354/2010 is filed under section 5 of Limitation Act to condone the said delay in filing the Petition in I.A.No.355/2010 under Order 9 Rule 4 read with section 151 of CPC. In the petition-affidavit, the petitioner specifically pleaded that, it filed an application under order 9 rule 4 read with section 151 of CPC for restoration of the Suit by paying process. The reason being after dismissal of the Suit, the petitioner/plaintiff made hectic efforts to trace out the correct addresses of the respondents/defendants for proper service of summons/notice.

7. The Trial Court dismissed the I.A.No.354/2010 observing that, it is not the case of the petitioner/plaintiff that there was no knowledge about the date of hearing or otherwise. To show their bona fide, they ought to have filed the restoration petition at the earliest time. The cause shown by the respondents for delay is not sufficient.

8. In the facts and circumstances discussed above, I am of the considered view that admittedly there is 906 days delay in filing the application under Order 9 Rule 4 r/w section 151 CPC. Though the petitioner need not explain day-to-day delay, it has to show sufficient cause. The Suit is for recovery of money and it was dismissed for default on 13.11.2007 for non-payment of process. The cause shown is that the petitioner-chit fund company made hectic efforts to trace out addresses of the respondents/ defendants for proper service. The petitioner also filed process along with these petitions.

Contd..P.3.

9. The Trial Court erred in holding that petitioner has not shown sufficient cause and it is not the case of the petitioner that he has no knowledge of dismissal. The petitioner has admittedly knowledge of dismissal of the Suit for non-payment of the process. The delay which occurred in ascertaining correct addresses of the respondents/defendants for proper service of summons which is a sufficient cause shown by the petitioner for the delay in filing the application under Order 9 Rule 4 of the CPC. The Trial Court erred in dismissing the application to condone the delay. By condoning such delay no prejudice will cause to the respondents. Balance of convenience lies in favour of the petitioner/plaintiff. Therefore, delay of 906 days is condoned.

10. Accordingly, this Revision Petition is allowed while setting aside common order dated:29.3.2012 in I.A.No.354/2010 in O.S.No.399 of 2006 and I.A.No.355/2010 in O.S.No.399 of 2006.

The Trial Court is directed to restore the Suit to file and proceed with. However, no order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

JUSTICE N. BALAYOGI

Dated:11-12-2018

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