

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Civil Revision Petition No.2765 of 2018

Date: 27.04.2018

Between:

Bheemiseti Adibabu

.. Petitioner

and

Saragadam Eswara Rao @ Thowdu Raju

.. Respondent

Counsel for the Petitioner : Mr.KSG.Padmavathi

The Court made the following:



Order :

This Civil Revision Petition is filed against Order, dated 15-02-2018, in IA.No.725 of 2017 in OS.No.102 of 2013, on the file of the Senior Civil Judge, Yellamanchili.

I have heard Smt.K.S.G.Padmavathi, learned Counsel for the petitioner, and perused the record.

The respondent filed the abovementioned suit for specific performance of an agreement of sale, allegedly, executed by the petitioner. As the petitioner failed to file written statement after entering appearance through his Counsel, he was set *ex parte* and an *ex parte* decree was passed on 23-07-2014. The respondent filed EP.No.61 of 2016 for execution of the decree. Thereafter, the petitioner filed IA.No.725 of 2017 under Section 5 of the Limitation Act, 1963, for condonation of delay of 1082 days in filing the Application under Order IX Rule 13 CPC. In support of his Application, the petitioner has filed an affidavit wherein he has *inter alia* stated that he has not received summons in the suit and has also not executed any Vakalat in favour of the Advocate, who, allegedly, filed the Vakalat. The petitioner

also averred that he suffered from Jaundice for 2½ months and took country medicine for the same. The Court below has dismissed the said petition by rendering a finding that as per the proceeding sheet mentioned by the Court, the suit summons were served on the petitioner personally; that on receipt of the same, he has engaged a Counsel by name A.V.S.Bhavani Prasad on 08-11-2013; that the matter was adjourned for filing written statement from the said date to 22-04-2014; that as there was no representation on the said date, the petitioner was set *ex parte*; and that the suit was decreed on 26-06-2014.

Except taking the stand that he has not engaged any Counsel or executed Vakalat, the petitioner has not substantiated the same by producing any material. If the petitioner has not engaged Mr.A.V.S.Bhavani Prasad as his Counsel, he could have obtained his affidavit to that effect and filed the same into the Court. The endorsement on the proceeding sheet of the Court being an official act, its authenticity cannot be doubted. Such endorsement would, thus, clinchingly prove that the petitioner had the knowledge of filing of the suit and has even engaged a Counsel to defend

him. Further, the petitioner has not produced any evidence to show that he was suffering from Jaundice. The conduct of the petitioner shows that he was highly negligent in pursuing his cause and approached the Court more than three years after the *ex parte* decree was passed without any semblance of acceptable explanation. In my opinion, the lower Court has rightly dismissed the IA and hence, I do not find any reason to interfere with the order passed by it.

The Civil Revision Petition is, accordingly, dismissed.

As a sequel to dismissal of the Civil Revision Petition, IA.No.1 of 2018, filed by the petitioner for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 27th April, 2018
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