

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.3377 of 2018

ORDER:

Heard Ms.K.Laxmi Manohar for revision petitioner. None appears for respondents inspite of service of notice on respondent No.1.

I.A.No.100 of 2017 was filed under Section 5 of Limitation Act to condone the delay of six (06) days in filing a petition to set aside the dismissal order dated 14.09.2016. The learned trial Judge refers to a few happenings and has dismissed the application. Hence, the Civil Revision Petition.

The suit is for perpetual injunction and on account of non-cooperation perceived by the trial Court on the part of plaintiff/revision petitioner, the suit was dismissed on 14.09.2016. Be that as it may, assuming the revision petitioner did not cooperate or comply with the term imposed by the trial Court, when the delay is nominal and party seeks the indulgence of the Court, the trial Court would have exercised the discretion to meet the ends of justice, if necessary would have put the parties seeking indulgence on terms as are warranted. Instead, by recording the following findings, the application is dismissed.

“After perusing the docket of the suit it was observed that since 26-08-2011 the said suit was adjourned for trial continuously and on 16-06-2014 the plaintiff again filed on petitioner U/Order 6 Rule 17, that means after three years of framing of issues, somehow the petition was allowed and again the suit was posted for plaintiff's evidence and

conditionally it was posted on 14-09-2016 on cost of Rs.200/- as this court has observed that there was inordinate delay committed by the petitioner/plaintiff for leading his evidence. Therefore, even after imposing the condition the petitioner did not turn up for leading his evidence, therefore, this court has dismissed the suit for default.

After perusing the docket sheet of the suit that the plaintiff kept on dragging the matter for leading his evidence and in the present petition also the petitioner/plaintiff has mentioned that he was suffering with viral fever but there is no documentary proof in support of his ill health. Therefore, there are no satisfactory reasons for allowing this petitioner. Therefore, this petition is dismissed.”

Prima facie, I am of the view that the manner in which the discretion is exercised is untenable.

Hence, the Civil Revision Petition is allowed and consequently I.A.No.100 of 2017 is allowed. No order as to costs.

The suit is directed to be disposed of within three (03) months from the date of receipt of copy of this order.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Date: 01.10.2018
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