

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.3589 of 2018

O R D E R:

Heard counsel for petitioner and Sri V.Nitesh, Counsel for 1st respondent.

2. This Revision is filed assailing the order dt.20.02.2018 in I.A.No.665 of 2017 in O.S.No.70 of 2016 of the V Additional District Judge, Tirupati.

3. The said suit was initially filed as O.S.No.116 of 2013 on the file of the Additional Senior Civil Judge, Tirupati, for permanent injunction by respondents 1 & 2 herein which was later transferred to the Court of V Additional District Judge, Tirupati and renumbered as O.S.No.70 of 2016.

4. Petitioners were impleaded as defendants 9 & 10 in the said suit by order dt.21.04.2015 in I.A.No.585 of 2013.

5. Though they were impleaded on 21.04.2015, they did not choose to file written statement for more than a year and so they were set *ex-parte* on 01.03.2017.

6. On 07.11.2017 petitioners filed I.A.No.665 of 2017 to set aside the order dt.01.03.2017 setting them *ex-parte* contending that their only son fell ill seriously and admitted in CMC Hospital, Vellore.

7. Medical Certificate produced by the petitioners indicated that petitioner's son was admitted in the hospital on 04.10.2016 and was discharged on 10.11.2016.

8. No explanation was given by the petitioners, as to what they were doing between 10.11.2016 till 01.03.2017 and why the petition under Order IX Rule 7 CPC came to be filed eight months later on 07.11.2017.

9. Therefore, the Court below dismissed the said application stating that petitioners are residents of Tirupati and at least one of them would have consulted their advocate and given instructions to file written statement but neither of them did anything and obviously this application was filed to procrastinate the proceedings in the suit.

10. Assailing the same, this Revision is filed.

11. Counsel for petitioners contends that grave prejudice would be caused to the petitioners if the petitioners are not allowed to contest the suit and there were reasonable grounds to set aside the order dt.01.03.2017, because of which the petitioners could not file written statement after their impleadment in the suit on 21.04.2015.

12. It is clear that the petitioners were impleaded as defendants 9 and 10 in the suit on 21.04.2015. Under the amended provisions of Civil Procedure Code, written

statement is required to be filed within 30 days of impleadment/receipt of summons in the suit. It is not the case of the petitioners that they were not aware of their impleadment in the suit. Merely because petitioners' son suffered illness between 04.10.2016 and 10.11.2016, petitioners cannot take advantage of the same for their inaction in filing written statement till 01.03.2017 when they were set *ex-parte* by the Court below. They being the residents of Tirupati, at least one of them could have instructed their advocate and given instructions to file written statement. Also, the illness of their son cannot be a reason for delay in filing the Order IX Rule 7 petition on 07.11.2017.

13. Therefore, the Court below was right in coming to the conclusion that there was no sufficient cause for the petitioners for not filing written statement in time and they had deliberately procrastinated issue and even filed this application also 8 months after the petitioners were set *ex-parte*.

14. I therefore do not find any error of jurisdiction in the order passed by the Court below refusing to allow the I.A.No.665 of 2017 in O.S.No.70 of 2016 of the V Additional District Judge, Tirupati.

15. Accordingly, this Civil Revision Petition is dismissed at the admission stage. No order as to costs.

16. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

20th September, 2018.
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