HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4095 of 2018

ORDER:

This revision is filed by the petitioners/plaintiffs, aggrieved by the order dated 03.02.2018 in I.A.No.281 of 2017 in O.S.No.197 of 2013 passed by the Principal District Judge, Nellore.

2. The petitioners herein are the plaintiffs in the above suit. The suit was dismissed for default on 21.09.2016. It is to restore the suit, application under Order IX Rule 9 CPC filed with I.A.No.281 of 2017 to condone the delay in its filing of 107 days and on contest, the same was ended in dismissal on 03.02.2018 by the impugned order, which is the subject matter of the present revision.

3. Heard both sides and perused the impugned order and the grounds of revision.

4. A perusal of the grounds of revision vis-à-vis the affidavit in restoration application to condone the delay that is covered by the impugned order shows the delay in filing the application under Order IX Rule 9 CPC caused due to mistake and oversight and the suit posted on 21.09.2016 for trial. However, due to ill-health of the mother of the petitioners/plaintiffs, they could not attend the Court on said date, when called and for no representation it was dismissed for default and the same to be condoned.

5. The order of the lower Court from the contest by respondents shows that the suit is of the year 2013 filed for

damages of Rs.18,00,000/-, issues settled on 15.06.2015 and underwent several adjournments for facing of trial including on 18.08.2016 and on that day, neither the petitioners nor their advocate appeared and the suit was adjourned to 29.08.2016, to proceed with trial else to dismiss and on that day also, they were not ready and it was, on their request, when adjourned to 14.09.2016, again taken time to 21.09.2016 and it is, on that day for none appeared and with no representation including till 3.00 p.m. the suit was dismissed for default.

6. So far as that dismissal order concerned on merits. There is nothing to interfere practically. Even coming to the delay condonation application, what is mentioned is, it is due to oversight and mistake, the delay of 107 days in filing the application to set aside the dismissal order was stated arisen. Once such is the case, even from the pragmatic approach, there is no sufficient cause, once it is rightly dismissed by the lower Court, for this Court while sitting in revision, there is nothing to interfere with the impugned order.

7. Accordingly, the Civil Revision Petition is dismissed.

8. Consequently, miscellaneous petitions, if any shall stand closed. No order as to costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 07.09.2018
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