

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.28 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order and decree dt.09-11-2018 passed by the I Senior Civil Judge, City Civil Court, Hyderabad in I.A.No.1517 of 2018 in I.A.No.63 of 2016 in O.S.No.85 of 2014.

2. Petitioner is plaintiff in the suit.
3. He filed the suit for recovery of money against the respondent.
4. The respondent was set *ex parte* on 24-03-2014 and an *ex parte* decree was passed in the suit on 07-04-2014.
5. Thereafter I.A.No.63 of 2016 was filed by respondent to condone the delay in filing the petition to set aside the *ex parte* decree.
6. The said I.A. was dismissed for default on 27-09-2016.
7. Thereafter the respondent filed I.A.No.1557 of 2018 under Section 5 of the Limitation Act, 1963 to condone the delay of 742 days in filing petition to restore I.A.No.63 of 2016.
8. In the affidavit filed in support of the said application, he contended that he is resident of Nirmal in Adilabad and the suit was filed at Hyderabad; that during pendency of criminal proceedings between the parties, he came to know about the pendency of the present suit; that he engaged a Lawyer for filing a petition to set aside

the *ex parte* decree, but the said Lawyer kept him in dark and never filed any application; that then he engaged another counsel, who filed I.A.No.63 of 2016 under Section 5 of the Limitation Act, 1963 for condonation of delay of 527 days, but the said counsel also did not take steps for service of notice. It was contended that respondent enquired about the said proceedings by engaging another counsel and he was informed that I.A.No.63 of 2016 was dismissed for default on 27-09-2016 and so he filed I.A.No.1517 of 2018 with a delay of 742 days.

9. Counter affidavit was filed by petitioner opposing the said application and pointing out that no satisfactory cause was shown for condoning the inordinate delay of 742 days for seeking restoration of I.A.No.63 of 2016.

10. By order dt.09-11-2018, the Court below allowed I.A.No.1517 of 2018 and condoned delay of 742 days on payment of costs of Rs.5,000/- by respondent to petitioner and restored I.A.No.63 of 2016. In the said order, the Court below took into account the fact that respondent is resident of Gajulapeta of Nirmal as well as the fact that Criminal Appeal No.405 of 2015 was allowed on 12-10-2017 by the IV Metropolitan Sessions Judge in favour of respondent setting aside the judgment of conviction passed against him in the prosecution initiated by petitioner under Section 138 of the Negotiable Instruments Act, 1881 and observed that even if there are some lapses on the part of respondent, the door should not be shut on him and delay can be condoned on payment of costs.

11. Assailing the same, this Revision is filed.

12. Though learned counsel for petitioner sought to contend that inordinately long delay could not have been condoned by the Court below, he did not dispute that respondent is not a resident of Hyderabad where the case is pending and he is a resident of Nirmal and he had to rely on counsel to properly prosecute the civil proceedings initiated against him by the petitioner. For the fault of counsel employed by petitioner for not properly contesting / prosecuting I.A.No.63 of 2016, the respondent cannot be punished.

13. I am of the opinion that the Court below had rightly exercised its discretion and condoned the delay of 742 days by imposing costs on respondent. Such discretionary order passed by the Court below does not warrant any interference by this Court in exercise of its power under Article 227 of the Constitution of India.

14. Therefore, the Revision fails and it is accordingly dismissed at the stage of admission. No costs.

15. The Court below is directed to decide I.A.No.63 of 2016 which is pending on its file as expeditiously as possible preferably within six (06) weeks from the date of receipt of a copy of this order.

16. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-01-2019

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