

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

C.R.P.No.82 of 2019

O R D E R:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.14.11.2018 in I.A.No.259 of 2017 in O.S.No.4 of 2013 of the Senior Civil Judge, Gadwal.

2. Petitioner is the 1st defendant in the said suit, which was filed by the 1st respondent for partition of the plaint schedule property and for allotment of 1/8th share to him.

3. Though summons were served on the petitioner, he did not contest the proceedings. So, he was set *ex-parte* on 08.03.2013.

4. Thereafter, petitioner filed a petition on 19.03.2014 to set aside the *ex-parte* order. The said petition was allowed and time was granted to the petitioner for filing written statement up to 10.04.2014.

5. Even then he did not file a written statement. So, on 27.08.2014, the right of the petitioner to file a written statement was forfeited and matter was posted for plaintiff's evidence. Thereafter, he was again set *ex-parte* on 16.10.2014.

6. After recording the evidence of the 1st respondent/plaintiff, preliminary decree was passed on 22.04.2015.

7. Thereafter, application was filed by the 1st respondent for passing of a final decree.

8. In the said proceedings also, on 28.09.2016, petitioner was present and requested time for engaging counsel but did not file counter. So he was set *ex-parte* on 08.11.2016.

9. Petitioner then filed I.A.No.259 of 2017 on 22.02.2017 under Section 5 of the Limitation Act, 1963 to condone the delay of 640 days in filing the petition to set aside *ex-parte* decree dt.22.04.2015.

10. Petitioner also filed another application under Order IX Rule 13 CPC. In the affidavit filed in support of the said application he stated that before passing of the preliminary decree, when the suit was pending, the matter was posted for filing his Vakalat and written statement, but he went to Hyderabad Hospital for checkup and was not able to come to the Court and therefore he was set *ex-parte* and an *ex-parte* decree was passed on 22.04.2015. It is also stated that after he returned from Hyderabad, he came to know through his relatives about passing of such *ex-parte* decree and unless the delay is condoned and the *ex-parte* decree is not set aside, grave prejudice would be caused to him.

11. Counter affidavit was filed by the 1st respondent opposing the said application. 1st respondent contended that no evidence in support of the petitioner's visit to Hyderabad Hospital has been filed nor any evidence about the ill-health of the petitioner; and his plea that he had no knowledge of the passing of decree and that he came to know about the same through his relatives also

cannot be accepted since no details about when he actually came to know about passing of the ex-parte decree were furnished.

12. By order dt.14.11.2018, the Court below dismissed the said application. It opined that the petitioner did not file any documents before the Court to show that he went to Hyderabad for medical check up, that he was not diligent in prosecuting the case, and so he has not shown sufficient cause to condone the delay of 640 days.

13. Challenging the same this Revision is filed.

14. Though counsel for petitioner contended that petitioner would be put to grave hardship and injustice would be caused to him if the said delay is not condoned, in the absence of any material to show that the petitioner suffered from any illness and had actually underwent any treatment in Hyderabad Hospital in the year 2014 or thereafter, it has to be held that petitioner had not shown any diligence in prosecuting the suit proceedings by filing a written statement and also leading evidence.

15. In fact the impugned order itself reveals that earlier petitioner had filed a petition to set aside the order setting him *ex-parte* on 08.03.2013, that the said application was allowed and he was given an opportunity to file a written statement also up to 10.04.2014, but he did not file any written statement till 27.08.2014.

16. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference under Article 227 of the Constitution of India.

17. Accordingly, this Civil Revision Petition is dismissed. No order as to costs.

18. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

25th January, 2019.

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