

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.160 of 2019

ORDER :

This Civil Revision Petition is filed challenging the order dt.20-12-2018 in I.A.No.223 of 2012 in O.S.No.76 of 2008 of the VIII Additional District Judge at Warangal.

2. Petitioners are plaintiffs in the said suit, which they have filed for declaration of title and for permanent injunction on 18-11-2008.
3. The suit was dismissed for default on 01-04-2011 since there was no representation by petitioners or their counsel.
4. On 28-01-2012, I.A.No.223 of 2012 was filed under Section 5 of the Limitation Act, 1963 to condone the delay of 273 days in filing application under Order IX Rule 9 C.P.C.
5. In the affidavit filed in support of the said application, it was stated that their counsel was away at Hyderabad having shifted his residence to Hyderabad and so did not represent the matter on 01-04-2011 and even thereafter till January, 2012. It was also mentioned that application for interim injunction I.A.No.921 of 2008 was dismissed by the I Additional District Judge, Warangal in the suit on 30-12-2008 and this was challenged in C.M.A.No.10 of 2009 before this Court and the C.M.A. was pending by the time the I.A. was filed.

6. Counter-affidavit was filed by 1st respondent opposing the said application and stating that petitioners did not take proper steps in finding out about the stage of the case from time to time and the Court got vexed with the non-cooperation of the petitioners and their counsel and dismissed the suit on 21-04-2011. It was also contended that it is for the party to make his Advocate to appear in the Court and the reason assigned for the delay in filing the application cannot be accepted as sufficient cause.

7. By order dt.20-12-2018, the Court below dismissed the said application. It observed that the reason given by the petitioners that their counsel shifted his residence from Warangal to Hyderabad is not a sufficient reason to condone the delay because the petitioners did not mention when they contacted their counsel and when they came to know about the dismissal of the suit. It is also mentioned that there was no stay granted in C.M.A.No.10 of 2009 and the C.M.A. itself was ultimately dismissed by this Court on 07-10-2013 and the petitioners were not diligent in prosecuting the suit.

8. Assailing the same, this Revision is filed.

9. Heard the learned counsel for petitioners and the learned counsel for respondents.

10. Admittedly, petitioners had filed the suit for declaration of title and perpetual injunction in respect of the plaint schedule property which is Ac.0.20 gts of land in Sy.Nos.1 and 2 of Kumarpally village,

Hanamkonda Mandal and valued the suit at Rs.31,43,000/-. Thus, the stakes in the suit are substantial.

11. When a party in the trial Court engages a counsel, he would trust the counsel to appear on various dates of adjournment in the suit and inform him about the stage in the suit from time to time. If the counsel had shifted his residence to Hyderabad from Warangal and did not attend the Court at Warangal where the suit is pending, petitioners cannot be made to suffer for the same. However, petitioners also should have taken some interest in knowing about the suit from time to time.

12. In this view of the matter, the order 20-12-2018 in I.A.No.223 of 2012 in O.S.No.76 of 2008 of the VIII Additional District Judge at Warangal is set aside; and the said I.A. is allowed subject to the petitioners depositing costs of Rs.5,000/- to the credit of the suit within four (04) weeks from the date of receipt of copy of the order, which shall be withdrawn by the respondents without furnishing any security.

13. The Court below shall restore the suit and proceed to decide the suit in accordance with law as expeditiously as possible preferably within a period of six (06) months from the date of receipt of copy of the order and both parties shall cooperate with the Court below for timely disposal of the suit since it belongs to the year 2008.

14. The Civil Revision Petition is allowed with the above directions. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-04-2019

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