

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

C.R.P.No.258 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India assailing the order dt.29.11.2018 in I.A.No.176 of 2018 in A.S.No.50 of 2015 of the Principal District Judge, Karimnagar.

2. The deceased-plaintiff in the original suit preferred the above appeal and after his death, petitioners had been brought on record as appellants on 13.07.2017.

3. Thereafter, the appeal was adjourned by the Court at the instance of petitioners cautioning them that said adjournments would be final, i.e, from 26.07.2017 to 21.08.2017, from 21.08.2017 to 30.08.2017, from 30.08.2017 to 12.09.2017, from 12.09.2017 to 19.09.2017 and from 19.09.2017 to 23.10.2017 mentioning that said adjournments was peremptory and as a last chance.

4. On 23.10.2017 petitioners moved an application seeking adjournment, but the Court below dismissed the said application and asked the counsel for appellants to get ready and argue the matter on 31.10.2017 making it clear that no further adjournment would be given.

5. On that day counsel for appellants as well as the appellants were not present, but an application was filed seeking adjournment stating that the counsel did not prepare the arguments.

6. The Court below dismissed the said application as well as the appeal with costs.

7. To set aside the said order, petitioners filed on 29.11.2017 I.A.No.176 of 2018 stating that the petitioners and his family members were suffering with severe fever and so they could not meet their counsel and explain the facts of the case; that petitioners intended to produce additional evidence; that the counsel had gone to Hyderabad for health counseling and had sent a adjournment petition with another advocate; and so the order dt.31.10.2017 ought to be set aside, the appeal be restored to the file of the Court below and petitioners' counsel be permitted to submit arguments in the appeal by producing additional evidence.

8. Counter affidavit was filed by the respondents opposing the said application pointing out that the reasons now assigned are not true at all, that the petitioners had been given sufficient time to advance arguments in the appeal, but they did not cooperate with the Court, and that they want to protract the litigation.

9. By order dt.29.11.2018 the Court below dismissed the I.A.No.176 of 2018 in AS.No.50 of 2015. It referred to the 6 adjournments granted from 26.07.2017 to 31.10.2017 spread over three months and also the fact that it had repeatedly cautioned the counsel for petitioners that the adjournments were being granted finally/last chance/peremptorily. It also noted that the suit out of which the appeal arose was of the year 2007 and the appeal itself was preferred in 2017 and petitioners cannot now say that they want

to lead additional evidence. It also observed that there is no evidence that all the petitioners were suffering from fever on 31.10.2017 and there was no sufficient cause to restore the appeal.

10. Assailing the same, this Revision is filed.

11. Counsel for petitioners contended that substantive rights of the petitioners are involved in the appeal and if the petitioners are not given an opportunity to contest the same on merits, grave prejudice would be caused to them. He also contended that the reasons assigned by the petitioners for not proceeding with the arguments on 31.10.2017 were genuine and the Court below could not have rejected the same.

12. Petitioners have nowhere denied that the matter was adjourned six times to enable their counsel to address arguments from 26.07.2017 to 31.10.2017, and that the adjournments had been granted in the interregnum period specifically mentioning that such adjournments were final/peremptorily/and as a last chance. Petitioners' counsel therefore ought to have cooperated with the Court below and proceeded to argue the matter on 31.10.2017 instead of seeking an adjournment again through another Advocate on that day by making a request that he did not prepare for addressing the arguments.

13. Petitioners' claim that they were suffering from fever on 31.10.2017 is not supported by any evidence and in any event the presence of the petitioners at the time of hearing of the appeal

was not necessary since the arguments were to be addressed by the petitioners' counsel.

14. The other contention of the petitioners that they wanted to produce additional evidence cannot be countenanced since the suit filed by the respondents was for an injunction and it was filed in the year 2007, and in November, 2018 petitioners cannot contend that they want to again lead additional evidence. It appears that petitioners had no intention to proceed with the final arguments in the appeal before the lower appellate court and intentionally did not address arguments.

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

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

17. Consequently, Miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

11th February, 2019.

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