

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

C.R.P.No.231 of 2019

ORDER:

This Revision is filed assailing the order dt.30.11.2018 in I.A.No.2237 of 2017 in A.S.(SR)No.2422 of 2012 of the Chief Judge, City Civil Court, Hyderabad.

2. Petitioner is the plaintiff in O.S.No.612 of 2008 on the file of V Senior Civil Judge, City Civil Court, Hyderabad. He filed the said suit for partition against the respondent and also for perpetual injunction.

3. The said suit was dismissed after contest on 29.08.2011.

4. Assailing the same, petitioner preferred A.S.(SR) No.2422 of 2012 to the Court of Chief Judge, City Civil Court, Hyderabad.

5. The said appeal was returned by the said Court on 27.07.2012 pointing out that adequate Court fee was not paid.

6. Thereafter, petitioner resubmitted the appeal papers to the said Court on 24.04.2017 and filed I.A.No.2237 of 2017 under Section 148 of CPC wherein he sought condonation of delay of 1875 days in re-presenting the appeal.

7. In the affidavit filed in support of the said application, petitioner blamed his then counsel for not informing him about the stage of the appeal and contended that his counsel only informed him that the appeal is at SR stage and would get numbered after scrutiny and petitioner need not appear in the Court. He contended

that the respondent had filed eviction suit O.S.No.849 of 2011 against him before the II Additional Chief Judge, City Civil court, Hyderabad which was decreed on 22.12.2016, that he then enquired about appeal A.S.(SR).No.2422 of 2012 and came to know that it had been returned because Court fee paid was not adequate, that he had obtained 'No Objection Certificate' from his earlier counsel on 10.04.2017 and changed the counsel. He also stated that he filed CCCA.(SR).No.3929 of 2017 in this Court challenging the Judgment and Decree in O.S.No.849 of 2011, that the delay in representing the appeal is neither willful nor wanton and if the said delay is not condoned, grave and irreparable loss would be caused to him.

8. Respondents 2 to 4 were set *ex-parte* in the said application, while the 1st respondent contested the application through a counsel.

9. By order dt.30.11.2018, the Court below dismissed the said I.A. It observed that when petitioner had engaged a counsel, had knowledge of the proceedings pending before the Court, and was regularly attending the other suit proceedings for eviction initiated against him, it is difficult to believe that he failed to verify the status of this appeal. It therefore concluded that petitioner did not furnish any convincing or satisfactory reasons for the inordinate delay of more than five years in representing the appeal and petitioner was willfully negligent and he cannot take advantage of the same.

10. Assailing the same, this Revision is filed.

11. Though counsel for petitioner sought to contend that the impugned order has caused grave prejudice to the petitioner and the petitioner cannot be made to suffer for the negligence of his counsel in informing him about the status of the appeal, the fact remains that when the petitioner had been attending the Court in the other suit proceedings initiated against him for eviction by same party, he could have verified the status of his case instead of simply blaming his advocate for not informing him about the status of the appeal.

12. It is the duty of the party to ascertain from the Advocate or from the Court, the status of his case; and having been negligent in that regard, petitioner cannot blame the counsel and seek condonation of inordinate delay of 1875 days in seeking to resubmit the AS(SR).No.2422 of 2012 on 24.04.2017, after it had been returned for payment of deficit Court fee on 27.07.2012.

13. Having regard to the negligent conduct of the petitioner, I am of the opinion that petitioner is not entitled to any indulgence.

14. Accordingly, this Civil Revision Petition is dismissed at the admission stage. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

11th February, 2019.

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