

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.244 of 2019

ORDER:

Heard the learned counsel for the petitioners.

2. This Revision Petition is filed assailing the order dt.22-10-2018 in I.A.No.425 of 2016 in O.S.No.97 of 2011 on the file of the Principal Senior Civil Judge, Karimnagar.

3. Petitioners herein are defendant Nos.2 to 4 in the suit.

4. The suit was decreed *ex parte* on 10-09-2012. Petitioners filed I.A.No.425 of 2016 under Section 5 of the Limitation Act, 1963 to condone delay of 1293 days in filing the application under Order IX Rule 13 CPC.

5. In the affidavit filed in support of the said application, it was stated that the 1st petitioner, who is the mother of petitioner Nos.2 and 3, did not receive any notice or summons, that she was suffered from chronic disease T.B., was bed ridden and was undergoing treatment in hospital.

6. Counter affidavit was filed by the respondents/plaintiffs denying the said allegations placing reliance on a report dt.03-05-2011 of the Process Server who stated that summons had been served on defendant No.2/petitioner No.1 and she received the summons on

behalf of the petitioner Nos.2 and 3 also. It was further stated that petitioners had received notice in I.A.No.550 of 2011 also.

7. By order dt.22-10-2018, the Court below dismissed the said application stating that the Process Server's report shows that the 1st petitioner received summons not only on her behalf but also on behalf of minor sons D-3 and D-4 and she also received notice in I.A.No.550 of 2011 and she kept quiet all the days, and after the suit was decreed, she filed this I.A., and the said delay cannot be condoned.

8. Challenging the same, this Revision Petition is filed.

9. Though learned counsel for the petitioners sought to contend that petitioners had shown sufficient cause for condoning period of 1293 days of delay in filing petition under Order 9 Rule 13 CPC since the finding of the Court below on the basis of Process Server report was that the 1st petitioner has knowledge of the proceedings in the suit but has kept quiet, it is obvious that the petitioner had been negligent in defending her suit.

10. Therefore, I see no error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

11. Accordingly, the Civil Revision Petition fails and is accordingly dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 07-02-2019
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