

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

C.R.P.No.368 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.04.12.2018 in I.A.No.228 of 2017 in O.S.No.1572 of 2014 of the Principal Senior Civil Judge, Ranga Reddy District at L.B. Nagar, Hyderabad.

2. Petitioner is defendant in the said suit, which was filed by the respondent against him for recovery of a sum of Rs.7,70,000/- with interest @ 18% per annum.

3. Petitioner received summons in the suit and also filed a Written Statement after engaging a counsel. However, he did not lead any evidence or cross-examine the plaintiff's witnesses.

4. Therefore, the trial Court decreed the suit on 19.08.2016.

5. Petitioner then filed on 28.03.2018 I.A.No.228 of 2017 under Section 5 of the Limitation Act, 1963 to condone the delay of 555 days in filing the petition under Order IX Rule 13 CPC to set aside the *ex-parte* judgment and decree passed on 19.08.2016.

6. In the affidavit filed in support of the said application it is stated that he was doing business in coir and was living in Bangalore from 2003 to 2011; that later he came to Hyderabad, but was frequently visiting Bangalore where his daughter was studying during 2015-16; and that he was having health problems of High B.P. and Kidney problems. He contended that he engaged one

counsel by name P.S.N.Sharma, who was staying near his house and got Written Statement filed through the said counsel; that the said counsel assured him that he would take care of the case and not to come to the Court; and petitioner relied upon the counsel's advise. He stated that in February, 2016, petitioner tried to reach the counsel's office, but it was not opened for a long time and from the enquiries from the neighbours, he came to know that due to serious health and personal problems, he moved to his native place at Rajahmundry; that the contact phone number of the counsel was not working and so the petitioner was not aware of the status of the case.

7. It is contended by the petitioner that he received summons in E.P.No.4 of 2017 filed by the respondent and then he came to know about the suit being decreed; that he appointed a new counsel on 17.08.2017 but the said counsel did not obtain the material papers; that later he engaged another counsel on 07.02.2018 and then obtained the papers and filed the reply in the EP.

8. Petitioner blamed the Advocate, Sri P.S.N.Sharma, for not informing him about the status of the case and therefore prayed that the said delay of 555 days in filing the application under Order IX Rule 13 CPC be condoned in the interest of justice. Along with the said application he also filed certain medical reports.

9. Counter affidavit was filed by the respondent/plaintiff opposing the condonation of delay. It is contended that the medical reports filed by the petitioner were false, forged and were created for

the purpose of the case and cannot be believed. He also stated that allegations about the illness of the counsel were also false. He pointed out that written statement was filed in June, 2015 by the petitioner and petitioner is expected to follow up the matter with his counsel and so the delay in filing the application under Order IX Rule 13 CPC cannot be condoned.

10. By order dt.04.12.2018 the Court below dismissed the said I.A. It held that petitioner, having filed written statement, did not cross-examine PWs.1 & 2; in spite of the conditional orders passed by the Court, there was no cross-examination of PWs.1 & 2, and that the petitioner himself admitted that he used to stay in Bangalore and was busy with the development of his business and education of his children, but did not show due diligence towards the suit proceedings. It therefore held that no sufficient cause shown by the petitioner to condone the inordinate delay of 555 days in filing the application under Order IX Rule 13 CPC.

11. Assailing the same, this Revision is filed.

12. Counsel for petitioner contended that the Court below did not refer to several medical reports filed by the petitioner while passing the impugned order.

13. I have perused the said medical reports. They only indicate that the petitioner was diabetic since 2010.

14. Though counsel for petitioner stated that petitioner also suffered from cardiac problem, only one report of Lalitha Super

Specialty Hospital Private Limited relating to a test conducted on the petitioner on 07.01.2011 is filed and it does not indicate any cardiac problem.

15. Petitioner also filed an ultra-sonography test report dt.28.12.2010 and another one dt.26.7.2016, but neither of these documents indicate any problem with petitioner's kidneys.

16. Though counsel for petitioner contended that there were stones in his kidneys and the petitioner got operated, there is no mention in the affidavit filed in I.A.No.228 of 2017 about any such surgery, which the petitioner underwent for kidney problems.

17. There is also no material filed by the petitioner about his counsel being sick.

18. Obviously, petitioner did not bother to find out what was happening in the Court in the suit and was busy taking care of his business at Bangalore and is now blaming the Advocate for the same. It was the duty of the petitioner to attend the Court once in a while to ascertain how things were progressing in the suit, but it appears that from February, 2016 till August, 2017 petitioner did nothing.

19. Though counsel for petitioner sought to rely on the decision of this Court in ***R.Krishna alias Kistaiah v. R.Bala Narasaiah(died) per LRs. & Others.***¹ wherein delay of 502 days in filing application under Order IX rule 13 CPC was condoned, the principle laid down

¹ 2014(2) ALD 297

in the said case is that the reason for the delay is important and not the length of the delay.

20. In the instant case, as I already observed, the petitioner has been negligent and had not bothered to find out what was happening in the Court and therefore, petitioner cannot be shown any indulgence.

21. Accordingly, this Civil Revision Petition fails and it is dismissed. No order as to costs.

22. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

27th February, 2019.

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