

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.268 of 2019

ORDER :

This Civil Revision Petition is filed challenging the order dt.30.11.2018 passed in I.A.No.498 of 2018 in O.S.No.2087 of 2013 on the file of Principal Senior Civil Judge, Ranga Reddy District, at L.B. Nagar, Hyderabad.

2. The petitioner herein is 2nd defendant in the above suit.
3. The 1st respondent / plaintiff filed the said suit against the petitioner and two others for recovery of Rs.4,48,800/- basing on a private chit fund transaction.
4. The petitioner and the other defendants received summons in the above suit, but did not file written statement and were therefore set *ex parte*.
5. An *ex parte* decree was passed on 05.08.2014 by the Court below.
6. After a lapse of (1395) days, the petitioner herein / 2nd defendant filed I.A.No.498 of 2018 under Section 5 of the Limitation Act, 1963 to condone the said period of delay in filing the application under Order IX Rule 13 of Civil Procedure Code, 1908; and also filed I.A.No.968 of 2018 under Order IX Rule 13 of Civil Procedure Code, 1908.

7. In the affidavit filed in support of the said application, the petitioner stated that he had no cordial relationship with the other defendants, that he had approached an Advocate by name B. Kamalakar, known to him through another friend, to guide him for contesting the suit in February, 2014 and gave him *Vakalatnama* and fee of Rs.15,000/-. He contended that he informed his Advocate that he had no concern with the 1st respondent, and the other defendants might be liable. He stated that the said Advocate assured him about the filing of *Vakalatnama* and also for collection of documents filed by 1st respondent in the Court, and asked him to contact him in a couple of days. He alleged that the said Advocate dragged on the issue, and did not properly inform him about the status of the suit though he has received fees. He also stated that he was informed by his Advocate in October, 2014 that the suit was dismissed, that further amounts were also taken by the Advocate for supply of copy of the judgment in the suit, but he did not furnish it to him.

8. The petitioner stated that in September, 2017, he received notice in the E.P.No.49 of 2017 filed by the 1st respondent, that even then the Advocate again promised to look into the matter and took more fees, but did not do anything.

9. The petitioner further contended that he then approached a retired staff member who had worked in a Criminal Court and then obtained case documents and came to know that the suit had already been decreed. He therefore contended that the delay in filing the

application to set aside the *ex parte* decree is neither willful nor wanton, and ought to be condoned.

10. Counter-affidavit was filed by 1st respondent / plaintiff opposing this application, and contending that there is no truth in any of the contentions raised by petitioner. He pointed out that the day-to-day delay in filing the application under Order IX Rule 13 of Civil Procedure Code, 1908 has not been explained, that petitioner did not make any efforts to know the date of hearing at any point of time and was not diligent to prosecute the case. It was also stated that there was an attachment order pending suit, but violating the same, the petitioner sold away his attached house property, and the delay therefore should not be condoned.

11. By order dt.30.11.2018, the Court below dismissed the I.A.

12. Considering the contentions of both sides, the Court below observed that petitioner had merely made allegations against the Advocate engaged by him, but petitioner himself had not shown any due diligence to the process of the Court and he had never appeared before the Court. Therefore, there is no sufficient cause to condone the said delay in filing the application under Order IX Rule 13 of Civil Procedure Code, 1908; and the application therefore deserves to be dismissed.

13. Assailing the same, the present Civil Revision Petition is filed.

14. The counsel for petitioner contended that petitioner trusted his Advocate who misled him, and petitioner cannot be allowed to suffer for the negligence of the Advocate.

15. The petitioner herein is admittedly a businessman and he was aware that he is a party in the suit filed by 1st respondent since he received summons in the suit. After he engaged a counsel, it is his duty to see that written statement is filed and evidence is adduced in the suit opposing the suit claim. But the petitioner does not appear to have gone to the Court at any point of time to do any of the above things. The petitioner cannot solely blame his Advocate when he did not take any step to file written statement to defend himself or visit the Court from time to time to find out what is happening in the suit. This negligence on the part of petitioner does not entitle him to any indulgence, and the Court below cannot be said to have committed any error of jurisdiction in refusing to condone the inordinately long delay of (1395) days in presenting the application to set aside the *ex parte* order dt.05.08.2014.

16. Accordingly, the Civil Revision Petition fails and it is accordingly dismissed at the stage of admission. No order as to costs.

17. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11.02.2019

Ndr/*