

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.1278 of 2019

ORDER :

This Civil Revision Petition is filed challenging the order dt.25.03.2019 passed in Interlocutory Application No.1189 of 2018 in Original Suit No.68 of 2018 on the file of the Senior Civil Judge, at Khammam, refusing to condone the delay of (72) days, i.e., from 26.07.2018 to 05.10.2018 in filing Interlocutory Application No.185 of 2018 to restore the application filed under Order IX Rule 13 of Civil Procedure Code, 1908.

2. The petitioner herein is defendant in the above suit.
3. The respondent filed the said suit against petitioner for recovery of money.
4. The said suit was decreed *ex parte* on 25.06.2018.
5. Thereafter, the petitioner filed an application under Order IX Rule 13 of Civil Procedure Code, 1908 to set aside the *ex parte* decree, and the same came to be dismissed for default due to non-appearance of petitioner.
6. Thereafter, on 06.10.2018, petitioner filed Interlocutory Application No.1189 of 2018 to condone the delay of (72) days in filing the application to restore the application under Order IX Rule 13 of Civil Procedure Code, 1908.

7. It is not in dispute that there was also an order of attachment under Order XXXVIII Rule 5 of Civil Procedure Code, 1908 passed in Interlocutory Application No.185 of 2018 on 15.02.2018 restraining sale of property of petitioner. But the petitioner violated the same, and sold the property on 19.07.2018 even though it was under attachment.

8. In the Interlocutory Application No.1189 of 2018, petitioner admitted that he was aware of the attachment order, pending suit; that he is a private employee and having to take care of his family consisting of two female children, and so he could not contest the suit.

9. Counter-affidavit was filed by respondent opposing the said application, pointing out that the order of attachment pending suit was served on petitioner on 23.03.2018, but he did not furnish security; and the order of attachment was affected on 25.02.2018. He also contended that notice in the Execution Petition was served on petitioner on 23.02.2018, that he knew about the proceedings in the suit, and even violated the order of attachment by selling the property which was subject matter of attachment, and therefore this conduct of petitioner is not *bona fide*.

10. By order dt.25.03.2019, the Court below dismissed the said application stating that petitioner's conduct is not *bona fide*; that petitioner was aware of the suit proceedings, and notice in the order of attachment pending suit was also served on him; that his plea that

there was no service of summons is not correct; and that reasons for the absence of petitioner at the time when the application for restoration of suit was filed, were not satisfactorily.

11. Challenging the same, the present Civil Revision Petition is filed.

12. The counsel for petitioner contended that the Court below ought to have condoned the delay of (72) days in seeking to set aside the *ex parte* decree because of the difficulties expressed by petitioner.

13. However, he did not deny that petitioner received summons in the suit as well as the order of attachment on 23.02.2018, and that petitioner, in spite of knowledge about the same, sold away the suit schedule property which is subject matter of the order of attachment on 19.07.2018; and after the *ex parte* decree was passed on 25.06.2018, he filed Interlocutory Application No.1189 of 2018 on 06.10.2018 for restoration under order IX Rule 13 Civil Procedure Code, 1908, which was also dismissed for default on 25.06.2018.

14. From the facts narrated above, it is clear that the conduct of petitioner is not *bona fide*; and therefore, he is not entitled to any indulgence from the Court, as regards the condonation of delay in filing the application order IX Rule 13 Civil Procedure Code, 1908.

15. I do not find any merit in the Civil Revision Petition and it is accordingly dismissed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 05.07.2019

Ndr/*

