

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.1536 of 2019

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/defendant, challenging the order, dated 03.06.2019, passed in I.A.No.897 of 2018 in O.S.No.431 of 2011, by the IX Additional Chief Judge, City Civil Court at Hyderabad, whereby, the petition filed by the petitioner/defendant, under Section 5 of the Limitation Act, 1963, to condone the delay of 12 days in filing the petition to set aside the *ex parte* decree and judgment, dated 05.02.2018, passed in O.S.No.431 of 2011 and permit the petitioner/defendant to contest the matter, was dismissed.

2. Heard the learned counsel for both the sides and perused the record.

3. The learned counsel for the petitioner/defendant would contend that the order under challenge is contrary to the facts and law. The suit is for recovery of huge money to a tune of Rs.30,00,000/- along with interest. There are no laches on the part of the petitioner/defendant for the delay. The counsel for the petitioner/defendant did not inform the petitioner/defendant about the proceedings of the case before the trial Court and did not give no objection vakalat to the petitioner/defendant to engage another counsel. The petitioner/defendant has got fair chances of success in the subject suit. The delay is neither wilful

not wanton and ultimately prayed to set aside the order under challenge and allow the Civil Revision Petition as prayed for.

4. On the other hand, the learned counsel for the respondent/plaintiff would contend that law assists a person who is diligent and not a person who is inactive and sleeps over his rights. There are laches on the part of the petitioner/defendant in pursuing the subject suit. The Court below rightly dismissed the subject interlocutory application, assigning reasons. There is nothing to take a different view and ultimately prayed to dismiss the Civil Revision Petition.

5. As seen from the material placed on record, the subject interlocutory application to condone the delay of 12 days in filing the petition to set aside the *ex parte* decree and judgment, dated 05.02.2018, passed in O.S.No.431 of 2011, was filed by the petitioner/defendant on the ground that his counsel did not inform him about the proceedings of the case before the trial Court and that in spite of several requests, he does not give no objection vakalat to the petitioner/defendant and when the petitioner/defendant filed a memo, dated 23.01.2018, seeking permission of the Court below for engaging another counsel, the Court below did not receive the same and in that process, the delay occurred. In the circumstances narrated by the petitioner/defendant, there is possibility of small delay in filing the petition to set aside the *ex parte* decree. The delay is not abnormal. Substantial issues are required to be determined in the subject suit by the trial Court. Under these circumstances,

the Court below is not justified in dismissing the subject interlocutory application.

6. Under these circumstances, the impugned order, dated 03.06.2019, passed in I.A.No.897 of 2018 in O.S.No.431 of 2011, by the IX Additional Chief Judge, City Civil Court at Hyderabad, is set aside. Consequently, I.A.No.897 of 2018 stands allowed by condoning the delay of 12 days in filing the petition to set aside the *ex parte* decree and judgment, dated 05.02.2018, passed in O.S.No.431 of 2011.

7. The Civil Revision Petition is, accordingly, allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

Dr. SHAMEEM AKTHER, J

19th November, 2019
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