

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.2119 of 2019

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908, is filed by the petitioner/defendant No.1, challenging the order, dated 07.06.2019, passed in I.A.No.359 of 2016 in O.S.No.311 of 2011, by the I Additional Senior Civil Judge at Warangal, whereby, the petition filed by the 1st respondent/plaintiff under Section 5 of the Limitation Act, 1963, requesting to condone the delay of 105 days in filing application under Order IX Rule 9 of C.P.C. for setting aside the order of dismissal of the suit for default, was allowed.

2. Heard the learned counsel for the petitioner/defendant No.1 and perused the record.

3. The learned counsel for the petitioner/defendant No.1 would contend that the 1st respondent/plaintiff is a firm being represented by its proprietor Ms.Jyothi Ravikanth. Though the 1st respondent/plaintiff stated that she was away from India and travelled to USA and in that process, delay of 105 days in filing application under Order IX Rule 9 of C.P.C. for setting aside the order of dismissal of the suit for default has occurred, the said submission was not substantiated by filing the passport or any other material evidence and ultimately prayed to set aside the order under challenge and confirm the docket order, dated 23.11.2015, passed by the trial Court dismissing the suit for default.

4. It is pertinent to state that the 1st respondent/plaintiff has given the details of her travel, return and period of stay in USA, i.e., from 18.07.2015 to 06.03.2016, on oath, by way of sworn affidavit. In that process, a delay of 105 days in filing application under Order IX Rule 9 of C.P.C. for setting aside the order of dismissal of the suit for default, has occurred. In the given circumstances, there is no need to file Xerox copy of the passport of the 1st respondent/plaintiff. Mere pleading in the affidavit of the 1st respondent/plaintiff, on oath, is sufficient to condone the delay. The Court below is justified in condoning the delay of 105 days in filing application under Order IX Rule 9 of C.P.C. for setting aside the order of dismissal of the suit for default. There is no infirmity or illegality in the order under challenge. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

5. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

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

19th September, 2019
Bvv

Dr. SHAMEEM AKTHER, J