

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.3706 of 2018

ORDER:

This Revision is filed assailing the order dt.22-02-2018 in I.A.No.6 of 2017 in O.S.No.1702 of 2007 of the IX Senior Civil Judge, City Civil Court, Hyderabad.

2. Petitioner is plaintiff in the suit.
3. She filed the suit for specific performance of an agreement of sale dt.08-09-2004 allegedly executed in her favour by respondents.
4. On 13-04-2015, the said suit was dismissed for default since petitioner was not present and there was no representation on her behalf though she had engaged a counsel. The Court below also recorded that petitioner is not reporting ready by paying stamp duty on the suit agreement of sale.
5. On 03-07-2017, the petitioner filed I.A.No.6 of 2017 under Section 5 of the Limitation Act, 1963 to condone the delay of 784 days in filing petition under Order IX Rule IX C.P.C. to restore the suit.
6. In the said application, petitioner contended that there is an objection for marking of the suit agreement of sale and it was sent to the District Registrar for impounding and collection of deficit stamp duty and thereafter the original itself was sent to the Court, but it was misplaced in the Court. She further contended that her husband

suffered with serious ill-health for more than a year and she was busy in providing treatment to her husband, who ultimately died subsequently. She stated that she could not contact her counsel and verify the status of the suit and she came to know subsequently through the counsel that it was dismissed for default.

7. Counter-affidavit was filed by respondents opposing the application and contending that there were no valid reasons for condonation of delay in filing petition under Order IX Rule IX C.P.C. They alleged that the agreement of sale itself is fabricated and there is no evidence to show that her husband suffered from serious illness and died due to ill-health. They also pointed out that no documents had been filed along with the application showing the period of illness of the husband of petitioner.

8. By order dt.22-02-2018, the Court below dismissed the said application. After recording the plea of the petitioner, it held that there was no mention of the period the husband of the petitioner was suffering from ill-health or the date of operation or death of the husband of petitioner, and in the absence of furnishing any such details, the inordinate delay of 784 days cannot be condoned and there were no sufficient grounds to allow the application.

9. Assailing the same, this Revision is filed.

10. Heard learned counsel for petitioner and learned counsel for respondents.

11. Learned counsel for petitioner contended that husband of the petitioner died on 14-04-2017 and prior to that, he had been undergoing treatment in Sai Vani Super Speciality Hospital and that these documents could not be filed before the Court below.

12. The period of treatment for the husband of petitioner in the said hospital seems to be from 14-10-2016, one and half years prior to the suit being dismissed for default.

13. In the absence of any evidence to show that petitioner had any difficulty in taking steps to pursue the suit at the time when it was dismissed for default on 13-04-2015, it cannot be said that petitioner had shown sufficient cause for condonation of said period of delay of 784 days.

14. Therefore I do not find any merit in the Civil Revision Petition and it is accordingly dismissed. No costs.

15. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-02-2019

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