

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.3141 of 2017

O R D E R:

Heard both sides.

2. This Revision is filed challenging the Order dt.01.06.2017 in I.A.No.165 of 2016 in O.S.No.25 of 2012 of the VI Additional District and Sessions Judge, Godavarikhani.

3. Petitioner herein is defendant in the above suit.

4. Respondent filed the said suit against the petitioner for specific performance of an Agreement of Sale executed in his favour in August, 2012.

5. Petitioner received summons in the suit and even engaged an advocate, but did not file written statement. So, he was set *ex-parte* and an *ex-parte* decree was passed on 01.10.2013.

6. On 07.01.2016, petitioner filed an application under Order IX Rule 13 CPC and another application I.A.No.165 of 2016 under Section 5 of the Limitation Act, 1963 to condone the delay of 822 days in filing the petition under Order IX Rule 13 CPC.

7. In the affidavit filed in support of this application he stated that after coming to know of the filing of the suit, he engaged an advocate by name V.Ravi Kumar and then filed a complaint before the Judicial Magistrate of First Class, Manthani at Godavarikhani against the respondent and another, but the same was dismissed;

that he was ignorant of the legal procedure and after receiving notice in the E.P.No.18 of 2014, he engaged another advocate. He alleged that due to financial and family problems he developed depression and fell ill and could not contact the said advocate; and only on 04.01.2016, he came to know that the Court below had passed orders directing Special Deputy Collector to deposit entire compensation pertaining to the suit schedule property before the Court; and therefore he filed the application to condone the delay.

8. Counter affidavit was filed by the respondent opposing the said application and contending that the petitioner received not only legal notice issued prior to filing of the suit, but he also engaged an advocate but did choose to file written statement, even though sufficient time was granted. He contended that the counsel for petitioner also failed to cross-examine the respondent and ultimately, an *ex-parte* decree was granted. He denied other allegations leveled against him by the petitioner.

9. By order dt.01.06.2017, the Court below dismissed I.A.No.165 of 2016. It noted that the pleadings of the petitioner itself indicated that petitioner received legal notice issued by the respondent prior to filing of the suit and the record reveals that the petitioner entered appearance through advocate in the suit, but did not contest the suit. It held that petitioner had knowledge about the suit in 2013 itself and he is unable to

explain why he could not file any petition to set aside the *ex-parte* decree immediately after decreeing of the suit.

10. Assailing the same, this Revision is filed.

11. Though counsel for the petitioner sought to contend that the matter may be viewed with sympathy and the delay in filing the application under Order IX Rule 13 CPC be condoned, having regard to the conduct of the petitioner, who was aware about the proposed litigation from the legal notice got issued by the respondent itself prior to the filing of the suit, and his own pleadings in I.A.No.165 of 2016 that he had engaged an advocate, by name Sri V.Ravi Kumar also in the suit, I am of the opinion that the petitioner had been negligent in defending his interest though he was aware of filing of the suit in 2013 itself.

12. No sufficient cause has been shown by the petitioner for condoning the inordinate delay of 822 days in filing the petition under Order IX Rule 13 CPC.

13. Therefore, this Civil Revision Petition fails, and it is dismissed. No order as to costs.

14. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

27th June, 2019.

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