

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

C.R.P.No.2512 of 2017

ORDER:

Heard Sri G.Madhusudhan Reddy, counsel for petitioners and Sri D.Bhaskar Reddy, Counsel appearing for respondents 1 & 2.

2. Petitioners have filed this Civil Revision Petition challenging the order dt.19.01.2017 in I.A.No.530 of 2014 in O.S.No.61 of 2008 of the Principal Junior Civil Judge, Jagtial.

3. Petitioners are plaintiffs in the said suit, which they filed seeking Permanent Injunction restraining the respondents from interfering with their alleged possession and enjoyment of the plaint schedule properties.

4. Written statement was filed by the respondents on 01.12.2012 and thereafter issues were also framed on 03.10.2012.

5. The matter appears to have been listed on 24.01.2013 when a "bandh-call" was given in the Telangana movement and there was lack of transport and so the petitioners claim that they did not attend the Court on that date.

6. According to the petitioners, they were under impression that they would receive a notice of the next date of hearing but on 05.02.2013, the suit was dismissed for their non-appearance.

7. Petitioners then filed I.A.No.530 of 2014 on 04.08.2014 under Section 5 of the Limitation Act, 1963 to condone the delay of 546 days in filing application under Order IX Rule 9 CPC alleging that just prior to the said petition they came to know about the result of the suit, that their absence on both dates was unintentional and the same be excused. They also stated that their father fell sick and was bedridden and petitioners were periodically taking him to different places for herbal treatment.

8. Counter affidavit is filed by the respondents opposing the said contention stating that the delay is inordinate and no evidence is adduced regarding the illness of the petitioners' father to justify the delay in filing the application under Order IX Rule 9 CPC.

9. By order dt.19.01.2017, the Court below dismissed the said application stating that no valid grounds were shown for not filing the application under Order IX Rule 9 CPC to restore the suit after 05.02.2013 within a reasonable time. The Court held that the petitioners cannot take the plea that they were under the impression that they would get fresh notices from the Court and there was no evidence about the illness of petitioners' father. The Court below also held that a party who is not diligent is not entitled for any indulgence of the Court.

10. Assailing the same, this Revision is filed.

11. Counsel for petitioners contended that on account of the 'bandh-call' given in the Telangana movement, petitioners could not attend the Court on 24.01.2013 and 05.02.2013 resulting in dismissal of the suit for default. Petitioners again contend that they are entitled to a fresh notice from the Court.

12. However, petitioners did not dispute that they had engaged a counsel. So nothing prevented the petitioners from approaching their counsel to know about the progress in the suit between 24.01.2013 and 04.08.2014, when the application under Order IX Rule 9 CPC was filed.

13. There is no evidence adduced by the petitioners to show that petitioners' father fell sick and even if the said allegation is true, all three petitioners cannot claim to be busy in that regard, because the counsel for petitioners as well as the petitioners have to be diligent and note down the further dates of hearing.

14. I therefore agree with the view of the Court below that petitioners did not show sufficient cause for condoning the inordinate delay of 546 days in filing the application under Order IX Rule 9 CPC to restore the suit which was dismissed on 05.02.2013.

15. Therefore, this Civil Revision Petition is dismissed. No order as to costs.

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

M.S.RAMACHANDRA RAO, J

02nd January, 2019.

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