

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.5797 of 2018

ORDER :

Heard the counsel for petitioners, and Sri M. Ram Mohan Reddy, counsel for respondent.

2. This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, 1908 challenging the order dt.04.06.2018 passed in Interlocutory Application No.820 of 2013 in Interlocutory Application No.257 of 2012 in Original Suit No.290 of 2006 on the file of III Additional District Judge, Ranga Reddy District, at Lal Bahadur Nagar.

3. The petitioners herein are plaintiffs in the above suit.

4. They filed the said suit against respondent for specific performance of an Agreement of Sale dt.13.09.2003.

5. The respondent filed Written Statement, and the matter was posted for trial.

6. The 2nd petitioner filed his affidavit in lieu of Chief-Examination, and the matter was posted for his cross-examination on 17.11.2011.

7. On the ground that petitioners did not appear before the Court on the said date, the suit was dismissed for default on 17.11.2011.

8. The petitioners then filed Interlocutory Application No.257 of 2012 for restoration of the above suit. Counter-affidavit was filed by respondent opposing the same.

9. On 05.09.2012, the said Interlocutory Application No.257 of 2012 was allowed by the Court below imposing costs of Rs.2,000/- to be paid by petitioners on or before 21.09.2012.

10. When the said costs were not paid within the time stipulated, the Interlocutory Application No.257 of 2012 came to be dismissed on 30.10.2012.

11. In the month of August, 2013, petitioners filed Interlocutory Application No.820 of 2013 to restore Interlocutory Application No.257 of 2012 by condoning the delay of (272) days in filing the application for restoration invoking Section 5 of the Limitation Act, 1963.

12. In the affidavit filed in support of the said application, the petitioners contended that 1st petitioner was suffering from fever on 17.11.2011 and so, he could not appear before the Court, and the suit was dismissed for default on the said date. He further stated that he filed Interlocutory Application No.257 of 2012 for restoration of the suit on 16.12.2011 and the said Interlocutory Application No.257 of 2012 was allowed on 05.09.2012 directing petitioners to pay costs of Rs.2,000/- on or before 21.09.2012, as a condition for restoring the suit. But it is stated that the said Interlocutory Application No.257 of

2012 was dismissed on 30.10.2012 as costs were not paid, and there was no representation on behalf of petitioners.

13. The petitioners contended that since 2nd petitioner was suffering from right side leg pain, knee joint pain and hemorrhoids, and was under treatment since 01.09.2012 till 28.02.2013, he was advised to take bed rest followed by treatment; so, the 2nd petitioner could not contact him, and the counsel for petitioners also did not inform the 2nd petitioner about imposing of the condition by the Court; and therefore, the 2nd petitioner could not attend the Court.

14. The 2nd petitioner filed a Medical Certificate viz., Ex.P.1, issued by a Civil Assistant Surgeon employed in the Osmania General Hospital in support of the above plea. He stated that he contacted his Counsel only on 29.07.2013, and came to know about the dismissal of the Interlocutory Application No.257 of 2012 on 30.10.2012.

15. Counter-affidavit was filed by respondent opposing the said application, and contending that after Interlocutory Application No.257 of 2012 was allowed and later adjourned to 30.10.2012, because of non-compliance with the order passed on 05.09.2012 the said Interlocutory Application No.257 of 2012 was dismissed for default. He denied the allegation of petitioners that 2nd petitioner was unwell and had undergone treatment from 01.09.2012 till 28.02.2013.

16. By order dt.04.06.2018, the Court below dismissed Interlocutory Application No.820 of 2013. It noted that the Medical

Officer who issued Ex.P.1 was not examined by petitioners, but he was summoned and examined as R.W.1 by respondent; that the said person was not an Orthopedic Surgeon, and he had issued Ex.P.1 Medical Certificate in his personal capacity; and the said certificate did not disclose any date. It noted that he did not state that 2nd petitioner underwent any surgery relating to his knee joint or had any orthopedic problem. It also pointed out that 1st petitioner / plaintiff did not do anything in the matter, that petitioners were not diligent enough, and the evidence of R.W.1 did not inspire confidence, and there were too many inconsistencies in it for it to be believed.

17. Assailing the same, the present Civil Revision Petition is filed.

18. The counsel for petitioner contended that the Court below ought to have allowed Interlocutory Application No.820 of 2013 accepting the reasons given by petitioners for their inability to pay costs of Rs.2,000/- within the time stipulated by the Court in its order dt.05.09.2012 passed in Interlocutory Application No.257 of 2012. He stated that the evidence of R.W.1, the Doctor who gave Ex.P.1 Medical Certificate, should have been believed by the Court below and the reasons assigned by 2nd petitioner for not taking steps to contest the proceedings should be accepted by taking a sympathetic view of the matter.

19. On the other hand, the counsel for respondent refuted the said contentions and supported the order passed by the Court below.

20. From the facts narrated above, it is clear that the suit had been filed by two plaintiffs / petitioners herein and both of them are residents of Hyderabad. After filing affidavit in lieu of Chief-examination on 17.11.2011, the 2nd petitioner did not appear before the Court, and so, the suit was dismissed for default on that day.

21. Interlocutory Application No.257 of 2012 was filed for restoration of the suit on 16.12.2011, and it was allowed on 05.09.2012 by imposing costs of Rs.2,000/- to be paid on or before 21.09.2012.

22. The petitioners did nothing till 30.10.2012 because of which Interlocutory Application No.257 of 2012 came to be dismissed.

23. Ten (10) months later, in the month of August, 2013, Interlocutory Application No.820 of 2013 was filed alleging that 2nd petitioner was suffering from right side leg pain, knee joint pain and hemorrhoids, and was under treatment since 01.09.2012 till 28.02.2013, and that thereafter he was advised to take bed rest. It is the contention of petitioners that 2nd petitioner therefore could not contact the counsel.

24. This plea cannot be accepted because all that the 2nd petitioner needed to do was send the costs of Rs.2,000/- to the Advocate through the 1st petitioner or any other family member of 2nd petitioner for payment of costs within the time stipulated by the Court below. He also could have asked the 1st petitioner to pay the costs. There is no

reason assigned as to why 1st petitioner, an able-bodied person, kept quiet through the entire period. Even if 2nd petitioner had leg pain, etc., nothing prevented him from contacting his counsel by picking up the telephone or by writing a letter.

25. The evidence of R.W.1 appears to be not *bona fide* considering the fact that he is not an Orthopedic Surgeon and he ought not to have given the Ex.P.1 Medical Certificate to 2nd petitioner in his personal capacity without mentioning any date therein.

26. In **G.P. Srivastava vs. R.K. Raizada and others**¹, no doubt, the Supreme Court held that the words “*sufficient cause*” appearing in Order IX Rule 13 must be liberally construed if there is no negligence or inaction imputable to the erring party. In the instant case, after the dismissal of the suit for default on 17.11.2011, the petitioners were given a life-line by the Court below by allowing Interlocutory Application No.257 of 2012 on 05.09.2012 on payment of costs of Rs.2000/- on or before 21.09.2012, but the petitioners cannot avoid payment of costs, wake up ten (10) months thereafter and then seek restoration of Interlocutory Application No.257 of 2012.

27. The reason given by petitioners that 2nd petitioner could not contact the counsel, cannot be accepted as a valid reason particularly when there is no reason as to why 1st petitioner could not contact the counsel. It is clearly a case of negligence on the part of petitioners.

¹ (2000) 3 S.C.C. 54

So, they are not entitled to any indulgence by condoning the said period of delay.

28. Accordingly, the Civil Revision Petition fails and it is dismissed. No order as to costs.

29. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02.07.2019

Ndr/*

