

2HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.5879 of 2018

ORDER:

This Revision Petition is filed challenging the order dt.04-09-2018 in I.A.No.346 of 2016 in O.S.No.806 of 2008 on the file of the VIII Additional District Judge, Ranga Reddy District.

2. Petitioner herein is 2nd defendant in the suit.

3. The suit was filed against the petitioner by 1st respondent for dissolution of the 2nd respondent-firm by directing the petitioner to furnish accounts of the said firm from April, 2008 till the date of dissolution, partition of the properties mentioned in schedules A and B and delivery of 40% of share to 1st respondent by dividing those properties by metes and bounds etc. One of the reliefs sought was also to direct the petitioner and 2nd respondent to pay Rs.30.00 lakhs with interest.

4. Summons were issued in the suit which were received by the petitioner and she engaged the counsel Sri N.Ravi Prasad. However, petitioner did not file Written Statement and she was set *ex parte*. Later 1st respondent was examined as P.W.1 and marked Exs.A-1 to A-7.

5. Petitioner and 2nd respondent filed an application I.A.No.2492 of 2008 under Section 8 of the Arbitration and

Conciliation Act, 1996 for rejection of the plaint. It was also dismissed subsequently. Thereafter, 1st respondent go herself recalled and exhibited Ex.A-8.

6. Subsequently, the suit was decreed on 24-11-2015 in part and the petitioner and the 2nd respondent were directed to pay sum of Rs.30.00 lakhs together with 12% interest per annum from the date of suit till the date of decree and 7% interest per annum from the date of decree till date of recovery and such recovery was to be made out of the estate of the husband of the petitioner.

7. Thereafter, E.P.No.405 of 2016 was filed by 1st respondent.

8. The petitioner filed E.A.No.212 of 2016 in the said E.P. to stay the execution of the decree. That E.A. was disposed of on 19-08-2016 directed her to deposit 1/4th of the decree amount and costs.

9. Petitioner questioned it in C.R.P.No.4267 of 2016. The said Revision Petition was disposed of on 05-07-2017 permitting her to deposit 15% of the decree amount together with suit costs within four weeks.

10. In the meantime, the petitioner filed on 13-07-2016 I.A.No.346 of 2016 under Section 5 of the Limitation Act, 1963 to condone the delay of 204 days in filing petition under Order 9 Rule 13 CPC. In the said application, she merely stated that the counsel

engaged by her did not inform her about status of the case and she is not aware of the decree passed in the suit. She stated that she was under impression that the suit was still pending.

11. Counter affidavit was filed by 1st respondent opposing this application pointing out that there was no valid reason to condone the said delay.

12. An Additional affidavit was filed by the petitioner claiming to be sick after filing of the vakalat and stating that she had been admitted in a hospital on 24-09-2015 and had a major surgery i.e. hysterectomy on 28-09-2015. She also stated that she was advised six months rest and so could not move from the bed. She stated that she was unable to contact the counsel personally about the status of the case and that she had no male support subsequent to the death of her husband. She also stated that she deposited some amount pursuant to the direction given by the High Court in C.R.P.No.4267 of 2016.

13. However, no evidence of any illness in the form of any Discharge Summary of the hospital or Medical Certificate was filed nor did the petitioner get herself was examined or examine any doctor who performed said surgery on her.

14. By order dt.04-09-2018, the Court below dismissed I.A.No.346 of 2016. It held that the petitioner is only blaming the earlier counsel, that there is no evidence of her illness and in the original delay condonation petition, she did not mention anything

about her illness at all and she had suppressed about filing of I.A.Nos.2492 of 2008 and 587 of 2010. Therefore, it concluded that petitioner was protracting the proceedings and by suppressing true facts, she had filed this I.A. It therefore held that there is no sufficient cause shown by the petitioner to condone the said delay.

15. Challenging the same, this Revision Petition is filed.

16. Sri C.V.Mohan Reddy, learned Senior Counsel, appearing for Sri G.V.Sivaji, learned counsel for the petitioner, contended that the order passed by the Court below is erroneous and that petitioner had shown sufficient cause in the original affidavit and the additional affidavit filed by her including mention of the illness/surgery and the Court below therefore could not have dismissed the said I.A.

17. Sti T.Surya Satish, learned counsel, appearing for the 1st respondent, refuted the above contentions and supported the order passed by the Court below.

18. The suit was admittedly filed by 1st respondent against the petitioner in the year 2008. It is not in dispute that after service of summons, when she did not file Written Statement in the year 2008 itself, she was set *ex parte*. Thereafter, I.A.No.587 of 2010 was filed to set aside the *ex parte* decree and she was given opportunity to file Written Statement by 22-10-2010 and she did not file Written Statement and contest the suit. She later filed I.A.No.2492 of 2008

stating that the suit is not maintainable in view of Arbitration clause invoking Section 8 of the Arbitration and Conciliation Act, 1976. But that application was also rejected. Thus, after having been given ample opportunities to contest the suit, petitioner failed to avail of them and ultimately the suit came to be decreed on 24-11-2015.

19. These are undisputed facts.

20. The application to condone delay of 204 days in filing petition under Order 9 Rule 13 CPC was filed on 13-07-2016. In the affidavit filed in support of the said I.A., there was no mention of any illness but blame was only put on the counsel for not informing the petitioner about the status of the case. Though in the additional affidavit, petitioner pleaded that she suffered acute ill-health and also underwent surgery on 28-09-2015 and was advised six months rest, no evidence in support of these facts is placed on record.

21. Merely because the petitioner is a widow, she cannot plead that she is helpless and unable to take steps to defend herself, more particularly, because it is alleged and found by the Court below that after the death of her husband, she took over his kerosene dealership business and was running it. Petitioner has also suppressed filing of I.A.No.2492 of 2008 and 587 of 2010.

22. In these circumstances, I do not find any error of jurisdiction in the order passed by the Court below warranting

condonation of delay of 204 days in filing the I.A. under Order 9 Rule 13 CPC petition.

23. Accordingly, the Civil Revision Petition fails and is dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 05-02-2018
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