

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.7212 of 2018

ORDER:

This Revision is filed assailing the order dt.06-10-2017 in I.A.No.1113 of 2016 in O.S.No.344 of 2010 of the I Additional Senior Civil Judge, Warangal.

2. Petitioner is plaintiff in the suit.
3. He filed the suit for declaration of title and for recovery of possession along with other reliefs.
4. The said suit was dismissed for default on 26-10-2014 on account of non-appearance of the petitioner and his counsel when the matter was posted for recording of evidence of petitioner.
5. On 19-10-2016, 725 days later, petitioner filed I.A.No.1113 of 2016 under Section 5 of the Limitation Act, 1963 to condone the said delay in filing application under Order IX Rule 9 C.P.C. and also filed another application under Order IX Rule 9 C.P.C.
6. In the affidavit filed in support of the said application, he stated that he could not attend before the Court below due to his ill-health and his counsel was engaged in other Courts.
7. No mention of the nature of ill-health of the petitioner is made in the affidavit filed in support of the application nor was any evidence adduced by petitioner before the Court below on the said aspect.

8. By order dt.06-10-2017, the Court below dismissed the said application. It held that petitioner did not explain reasons for the delay indicating sufficient cause in not filing application under Order IX Rule 9 C.P.C. within time, and he has also not appeared before the Court or produced any document in support of the said contention.

9. Assailing the same, this Revision is filed.

10. Learned counsel for petitioner contended that the suit is filed for declaration of title and recovery of possession and grave prejudice would be caused to petitioner if the delay in filing the application under Order IX Rule 9 C.P.C. is not condoned. He also stated that petitioner was suffering from viral hepatitis and enclosed medical certificates in this Revision and therefore the delay be condoned.

11. As already noted by the Court below, there is no mention of the nature of the illness of the petitioner in the affidavit filed in support of I.A.No.1113 of 2016. Petitioner did not lead evidence by examining himself or filing medical certificate in the Court below. When such opportunity was not availed of by petitioner in the Court below, the applications or evidence filed now cannot be taken as of face value, particularly when the nature of illness of the petitioner does not seem to support inability of the petitioner even to contact his Advocate on telephone. Even according to plaint, the petitioner was living with his father and no explanation is adduced by petitioner why his father or other family member could not contact the Advocate and give

instructions, or why this application could not be filed within a reasonable time after the suit was dismissed for default.

12. I, therefore, see no merit in the Revision and it is accordingly dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-02-2019

Vsv