

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

C.M.A. No.1334 of 2018

O R D E R:

This appeal is filed against the order dated 07.08.2018 in I.A.No.460 of 2016 in O.S.No.1563 of 2013 of VII Senior Civil Judge, City Civil Court, Hyderabad.

2. The appellants herein are the plaintiffs in the suit. The 2nd appellant is mother of the 1st appellant.

3. The suit was filed for perpetual injunction against the respondent.

4. The suit was posted to 02.06.2016 for marking documents on the side of the appellant. The 1st appellant claimed to be present at the time of call work and that the matter was passed over; that the 2nd appellant fell seriously ill on that day and he had to go to his house to give her medicines; and in the meantime, the matter was called and the suit was dismissed for default on that day.

5. On 04.06.2016, on the very 2nd day after this event, the 1st appellant filed I.A.No.460 of 2016 to restore the suit by setting aside the order dated 02.06.2016 invoking Order IX Rule 9 CPC.

6. This application was opposed by the respondents who contended that prior to 02.06.2016 several adjournments had been sought by the appellants and they did not deserve any

further indulgence since they were not diligent in prosecuting the case.

7. By order dated 07.08.2018, the Court below dismissed I.A.No.460 of 2016 on the ground that earlier adjournments had been sought by the appellants, that they dragged on the suit for 1 ½ years and that the appellants intended to prolong the case intentionally.

8. Assailing the same, this appeal is filed.

9. Heard the counsel for the appellants and Mr.Mirza Nisar Ahmed Baig Nizami, counsel appearing for the respondents.

10. Counsel for the appellant contends that within two days of the dismissal of the suit, application under Order IX Rule 9 CPC had been filed, and the Court below erred in taking into account the previous history of adjournments during the pendency of the suit and erred in dismissing I.A.No.460 of 2016.

11. Counsel for the respondents supported the order passed by the Court below.

12. It may be noted that the Court below did not deny that appellant No.1 was present on 02.06.2016 during call work, when the matter was passed over and that in the meantime because his mother, 2nd appellant, fell ill, he could not appear again before matter was called again and his counsel had

gone to a different Court and was not available to represent the matter.

13. If that be so, the earlier events/history would be totally irrelevant, since the Court below cannot take those factors into account and can only look into the cause for absence of 1st appellant on 02.06.2016. Substantive rights of the parties are involved in the suit and the appellants cannot be deprived in this manner of an opportunity to have the suit tried.

14. Accordingly, the Civil Miscellaneous Appeal is allowed and the order dated 07.08.2018 in I.A.No.460 of 2016 in O.S.No.1563 of 2013 of VII Senior Civil Judge, City Civil Court, Hyderabad is set aside; the said I.A. is allowed. No costs.

15. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

04.02.2019
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