

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

C.R.P.No.7711 of 2018

ORDER:

Heard the learned counsel for the petitioner.

2. This Revision Petition is filed assailing the order dt.13-11-2018 in I.A.No.375 of 2018 in A.S.S.R.No.1595 of 2018 of the XVI Additional District Court-cum-XVI Additional Metropolitan Sessions Judge's Court-cum-III Additional Family Court, Ranga Reddy District at Malkajgiri.

3. Petitioner is the defendant in O.S.No.761 of 2014 on the file of the II Additional Senior Civil Judge, L.B.Nagar, R.R. District.

4. The respondent filed the said suit against the petitioner for eviction, recovery of unpaid rents and damages etc. Summons in the suit were served on the petitioner and he filed Written Statement. But he did not lead any evidence. So the trial Court decreed the suit on 19-06-2017 on the basis of evidence adduced by the respondent.

5. Challenging the same, the petitioner filed A.S.S.R.No.1595 of 2018 before the XVI Additional District Court-cum-XVI Additional Metropolitan Sessions Judge's Court-cum-III Additional Family Court, Ranga Reddy District at Malkajgiri, with a delay of 252 days. He also filed I.A.No.375 of 2018 under Section 5 of the Limitation Act, 1963 to condone the said delay.

6. In the affidavit filed in support of the said application, he merely stated that after filing Written Statement, he fell sick with heart ailment, that he suffered heart attack two times and was totally bed ridden and could not suggest his counsel to take steps or to lead defence evidence. In the Court below, he filed Discharge Summary showing that he was admitted in hospital on 10-09-2011, underwent surgery on 15-09-2011 and got discharged on 24-09-2011 and that subsequently in 2016, from 24-12-2016 to 28-12-2016, he was again admitted in hospital. No evidence of his illness other than the above was placed on record.

7. The Court below held that petitioner did not place cogent evidence to show that he was treated as an In Patient in hospital at the relevant point of time when Court passed the decree and that he was prevented from attending Court on account of the illness. It also took note of the fact that the petitioner did not comply with an order under Order XV-A CPC passed during pendency of the suit, and also did not participate in the proceedings during the trial of the suit which went on for 1 ½ years. It observed that this application has been filed after filing of the Execution Petition only to defeat the decree and judgment suffered by the petitioner, and the petitioner did not show due diligence or provide satisfactory explanation for the condonation of delay in 252 days in preferring the appeal.

8. Assailing the said, this Revision Petition is filed.

9. Though the learned counsel for the petitioner sought to contend that the petitioner would suffer grave prejudice, if the said delay is not condoned and the appeal is not admitted by the Court below, the fact remains that after the decree was passed by the trial Court on 19-06-2017, no evidence of any illness suffered by the petitioner till the filing of the appeal in 2018 is filed in the Court below. He had only filed evidence of being an In Patient in hospital between 10-09-2011 and 24-09-2011 and from 24-12-2016 and 28-12-2016. These are much prior to the decree in the suit. In the absence of any material filed by the petitioner to show that he was disabled from filing the appeal after the suit was decreed, it has to be only held that petitioner was not at all diligent and did not show sufficient cause for condoning the long delay of 252 days in filing the appeal.

10. I therefore do not find any merit in the Revision Petition and is accordingly dismissed at the admission stage. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 29-01-2019
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