

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

**CRP.No.292 of 2020**

**ORDER:**

1. This Revision is filed challenging the order dt.17.04.2018 in IA.No.15 of 2018 in OS.No.316 of 2008 of the XIII Additional Senior Civil Judge(FTC), City Civil Court, Secunderabad.

2. Petitioner is the 2<sup>nd</sup> defendant in the above suit.

3. The respondents 1 to 3 filed the said suit for partition of the plaint schedule properties against the petitioner and other respondents.

4. Petitioner received summons in the suit and appeared in the Court in August, 2008 but did not file written statement. Therefore, he was set *ex-parte* and an *ex-parte* decree was passed on 03.03.2011.

5. 4½ years later, petitioner filed application under Section 5 of the Limitation Act, 1963 (numbered as IA.No.14 of 2018) to condone the delay of 1675 days in filing the application under Order IX Rule 13 CPC and also filed a separate application under order IX Rule 13 CPC.

6. In the said application he contended that in 2010 he had paralytic stroke and his hands, legs and mouth were not functioning properly, that he was not in a position to talk or walk properly and he was being taken care of by his wife and children, and therefore the delay occurred in filing the application under

Order IX Rule 13 CPC. Other contentions on merits were also raised.

7. Counter affidavit was filed by respondents 1 to 3 opposing the said application. They contended that the petitioner was affected with paralysis in 2010, that there is no material filed to show that petitioner's hands, legs and mouth were not functioning properly, and that there is no sufficient cause shown by the petitioner for condonation of the inordinate long period of delay of 1675 days in filing the application under Order IX Rule 13 CPC.

8. In the Court below, petitioner marked Exs.P1 to P11.

9. By order dt.17.04.2018, the Court below dismissed the IA.No.14 of 2018 in OS.No.316 of 2008. It held that the medical record filed by the petitioner pertains to the year 2010 and later period, but the Court record indicates that the petitioner appeared before the Court in August, 2008, but he never came forward to contest the matter. It also held that other defendants filed written statements, full trial was conducted and a preliminary decree was passed on merits. It observed that the petitioner had knowledge about the suit in August, 2008 itself, but he kept quiet till the judgment was pronounced on merits and only when the applications were filed for passing of a final decree, petitioner came forward with the instant application. It therefore rejected IA.No.14 of 2018 as well as IA.No.15 of 2018 filed under Order IX Rule 13 CPC.

10. Challenging the order in IA.No.14 of 2018, this Revision is filed.

11. Heard counsel for the petitioner.

12. Though counsel for the petitioner sought to contend that the petitioner's paralysis is the cause for his non-participation in the suit, the petitioner's counsel did not dispute that the petitioner was not ill in 2008 when the suit was filed and when he received summons. There is no valid explanation from the petitioner why he did not file written statement in the suit when he was not unwell.

13. After a decree is passed, the application IA.No.14 of 2018 was in fact filed in 2015, but petitioner did not get it numbered till 2018 and this also does not show the bonafides of the petitioner. It is not even the case of the petitioner that he is not aware of the filing of the suit, since he admittedly appeared in the Court below in August, 2008 in person.

14. So, petitioner cannot take advantage of his illness which occurred in 2010 to have the *ex-parte* decree set aside.

15. Therefore, I do not find any merits in this Civil Revision Petition and it is accordingly dismissed at the admission stage. No order as to costs.

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

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**M.S. RAMACHANDRA RAO, J**

14<sup>th</sup> February, 2020.

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