

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.1586 OF 2019

ORDER:

This revision, under Article 227 of the Constitution of India, is filed by the petitioner/defendant aggrieved by the order dated 10.04.2019 passed in I.A.No.612 of 2018 in S.R.No.2427 of 2016 in O.S.No.734 of 2011 by the I Additional Senior Civil Judge, Warangal, whereby the application filed by the revision petitioner/defendant under Section 5 of Limitation Act to condone the delay of 487 days in resubmitting the petition filed under Order IX Rule 13 of CPC *vide* S.R.No.2427 of 2016, was dismissed.

2. Heard both sides and perused the record.

3. Learned counsel for the revision petitioner/defendant would submit that Advocate on record before the Court below had not informed the revision petitioner about return of the petition filed under Order IX Rule 13 of CPC *vide* S.R.No.2427 of 2016. The revision petitioner is working as General Manager (Safety) in Kothagudem Region, Singareni Collaries. He was busy in discharging his official duties. Therefore, he could not contact his Advocate. Though several sustainable reasons were assigned in the affidavit filed in support of the application to condone the said delay, the Court below erroneously dismissed the application and ultimately prayed to set aside the impugned order and allow the civil revision petition as prayed for.

4. On the other hand, learned counsel for the respondent/plaintiff would submit that no tenable reasons were assigned to condone the said delay. It is further submitted that false averments were made in

the application throwing blame on Advocate, etc. The Court below is justified in passing the impugned order by assigning valid reasons and ultimately prayed to dismiss the revision petition.

5. In view of the submissions made by both sides, the point for determination is:

“Whether the impugned order dated 10.04.2019 is liable to be set aside?”

6. POINT:- The impugned order and the material placed on record reveal that the revision petitioner came to know about passing of the monetary decree against him *vide* judgment dated 27.07.2012 in O.S.No.734 of 2011, when E.P.No.326 of 2013 was filed for execution of the said decree. On 19.07.2016 he filed vakalat and written statement along with petition under Order IX Rule 13 of CPC to set aside the *ex parte* decree. However, the said petition was returned on 12.09.2016 on the ground of typographical mistake and time was granted till 11.10.2016 for compliance of the same. The revision petitioner averred that he has no knowledge about the return of the petition. It is contended that there is no mechanism or procedure of displaying the information of return petitions on Notice Board. Therefore, he was resubmitted the return SR on 16.02.2018 with a delay of 487 days. As the petitioner has no knowledge about return of the petition and as his Advocate did not inform about the same to him, he could not comply with the objection, within the time granted.

7. As per the record, the revision petitioner is working as General Manager (Safety) in Kothagudem Region, Singareni Collaries. He is an

educated person. Therefore, he cannot contend that he is not aware of the *ex parte* decree passed against him. He would have continuously pursued the subject petition filed under Order IX Rule 13 of CPC seeking to set aside the *ex parte* decree. He ought to have verified with his Advocate on record periodically with regard to the filing of the petition under Order IX Rule 13 of CPC and its status. He did not choose to do so for more than one and half years. In that process, the delay of 487 days occurred in not resubmitting the subject SR within the prescribed time. In the given circumstances, the revision petitioner ought not have blamed his Advocate stating that he was not informed about the status of the petition filed under Order IX Rule 13 of CPC.

8. The revision petitioner being an educated person, he ought to have pursued the remedy diligently without there being any laches. There are grave laches and omissions on the part of the revision petitioner in not pursuing the petition filed by him under Order IX Rule 13 of CPC. Filing of the petition under Order IX Rule 13 of CPC was within his knowledge. Therefore, he ought to have taken all the consequential measures to get the petition allowed. The submissions made on behalf of the revision petitioner are not sustainable. There are no genuine and justifiable reasons to condone the delay of 487 days in resubmitting the said S.R. Therefore, the Court below has rightly passed the impugned order by assigning valid reasons. There is no legal infirmity or perversity in the impugned order to take a different view. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

9. In the result, the Civil Revision Petition is dismissed.

The Miscellaneous Petitions, if any, pending shall stand closed.

No costs.

Dr. SHAMEEM AKTHER, J

Date: 02.01.2020
ssp

