

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 2655 of 2019

ORDER:

In this Civil Revision Petition, petitioners challenge order dated 03.06.2019 passed by the learned Principal Senior Civil Judge, Karimnagar, in dismissing I.A.No.9 of 2019 filed by them in O.S.No.109 of 2014 for condoning the delay of 1331 days in filing a petition under Order IX Rule 13 CPC for setting aside the *ex parte* decree and judgment dated 31.03.2015 in O.S.No.109 of 2014.

In the affidavit filed in support of I.A.No.9 of 2019, it was asserted by the first petitioner herein, who is defendant No.2 in the aforesaid suit, that in November, 2018, he came to be aware of the *ex parte* decree and judgment dated 31.03.2015 in O.S.No.109 of 2014, when the respondents/plaintiffs filed the same in O.S.No.213 of 2013 and immediately thereafter, on enquiry, he came to be aware of passing of *ex parte* decree on 31.03.2015 in O.S.No.109 of 2014 due to their non-filing of written statement. It was further asserted that he was looking after the proceedings in O.S.No.109 of 2014 on behalf of the second and third petitioners, but, unfortunately, as he suffered from jaundice and other ailments, he took village medicines from

May, 2015, onwards and only in the first week of November, 2018, he recovered and in the process, the delay occurred, and their non-filing of the written statement resulted in passing of the *ex parte* decree on 31.03.2015. After hearing the learned counsel for both the parties, the Court below passed the impugned order dismissing the aforesaid I.A.

Relevant paragraphs of the impugned order are extracted as under:

“Moreover, the respondent/plaintiff has filed the documents Ex.R1 it shows CC of Notices in I.A.No. 525 of 2015 in OS No.109 of 2004 was issued to the petitioner herein and it was served on him on 26.9.2015, Ex.R2, R3 are the CC of notices of other respondents in I.A.No.525 of 2015 which was served on the petitioner/defendant No.2 herein. Ex.R4 is the CC of commissioner report it shows on 4.1.2017 the commissioner filed the report in which he stated on 12.12.2016 he visited the suit schedule property and executed the warrant, at that time the petitioner herein/D2 was present, the another respondent Sardar Jagan singh was also present. Ex.R5 is the CC of final decree proceeding in O.S.No.109 of 2014 passed on 13.3.2017. Ex.R6 is the CC of summons in OS. No.62 of 2015 served on the petitioner herein on 3.7.2015. Ex.R7 is the CC of vakalath filed by petitioner herein on 7.8.2015 in OS No.62 of 2015. Ex.R8 is CC of Chief affidavit of petitioner herein in OS No. 213 of 2013 filed on 25.6.2018 and he was appeared before the Court on 9.8.2018, 31.8.2018 for marking of documents and cross-examination. Ex.R9 is the CC of chief affidavit of PW2 in OS No. 213 of 2013 filed on 11.9.2018 and he was cross-examined on 3.10.2018. Ex. R10 is CC of docket in OS No.213 of 2013 it shows on 25.6.2018, 9.8.2018,

29.8.2018, 31.8.2018, the petitioner was present. Ex.R11 is CC of judgment in OS No. 213 of 2013 pronounced on 20.12.2018.

The above documents shows that the petitioner is pursuing other suits and filed Vakalath in the other suits. He has given evidence before the Court and appeared before the Court in OS No.213 of 2014 during the period from 1.5.2015 to 21.11.2018, in the present case, he is asking the Court to condone the delay for the period from 1.5.2015 to 21.11.2018. He stated during this period his health condition was not good so he could not appear before the Court, but, the documents shows he pursued the other suits during this period, even in the present case when the commissioner visited the spot on 12.12.2016 he was present. In the cross-examination under Ex.R8 he denied that he was present at the time of visit of advocate of commissioner. The documents shows after disposal of OS No. 213 of 2013 basing on the judgment and decree passed in the present suit and by relying on the commissioner report and the rough sketch prepared by commissioner, he started to question the earlier suit with intention to claim rights in OS No. 213 of 2013. The documents establish that the petitioner is perusing the other matter and he is well aware of proceedings of this case even in the year 2016 when the commissioner visited the spot but, in the year 2019 after disposal of OS No. 213 of 2013 he has filed present application. It falsifies the contention of petitioner hence, the petitioner failed to explain sufficient cause for not appearing before the Court, hence this petition is hereby dismissed with costs.”

The afore-cited narration of events occurred between 01.05.2015 and 21.11.2018 amply demonstrate that the reason stated by the first petitioner that he was suffering from jaundice for his not being aware of the proceedings and not being active

during that period, is a false one. Further, no medical evidence was produced by the first petitioner with respect to his suffering from jaundice. However, this Court can take judicial notice of the fact that the petitioners are not illiterates and they were business people, as such, they cannot plead ignorance of the proceedings in relation to the subject property. It is to be noted that the *ex parte* decree reached its finality in 2017 itself and there is no challenge to the same. For all these reasons, the impugned order does not call for any interference by this Court and there is no merit in this Civil Revision Petition.

Accordingly, this Civil Revision Petition is dismissed.

Miscellaneous Petitions, if any pending, shall stand dismissed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

24th JANUARY, 2020.

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