

C.M.P.No.428 of 2015
in
S.A.No.332 of 1997

P.R.SHIVAKUMAR.J.,

Heard. Respondents 2 to 5 have not been served with notice as notice to them had been dispensed with in the second appeal itself. So far as the first respondent is concerned, though private notice with the permission of the Court has been served and the name of the first respondent appears in the cause list, none appears for the first respondent.

2. The appellants in S.A.No.332 of 1997, which was dismissed for non-prosecution on 21.01.2011, are the petitioners in the Civil Miscellaneous Petition. They were the defendants in the original suit in which Adhanoor Village Panchayat filed the suit praying for a declaration regarding the right to grant licence or lease of fishing rights in the tanks in the said panchayat and for a permanent injunction against the appellants and the other respondents who claim that the rights vested with them. Of course, the first respondent/plaintiff suffered a failure before the trial Court. On appeal, the trial Court's judgment was reserved and the relief sought for by the plaintiff panchayat came to be granted. As against the said judgment and decree, which came to be passed as early as on 05.12.1996, the petitioners herein chose to prefer the second appeal and obtain an order of stay on condition to pay a sum of Rs.4,000/- per year.

After having obtained such an order on 29.04.1998 itself, the appellants and other defendants were able to enjoy the fishing rights for about 17 years. Nearly after 13 years from the date of obtaining such an order, the petitioners chose to leave the second appeal to be dismissed for non-prosecution. Even thereafter, they did not take steps for about 4 years to get the order of dismissal for non-prosecution set aside and the second appeal restored. Only on 30.03.2015, a petition for restoration of the second appeal along with the present petition to condone the delay of 1494 days in filing the petition to set aside the order of dismissal of the second appeal for non-prosecution came to be filed. The reason assigned is that the counsel engaged by the petitioners did not appear when the case stood listed for final hearing and through the local counsel, the petitioners got the information only on 10.03.2015 that the second appeal had been dismissed for non-prosecution and the order came to be passed on 25.01.2011. After the dismissal of the second appeal for non-prosecution, more than 4 years have lapsed.

3. It is the contention of the petitioners, as found in the supporting affidavit, that every year they were paying the amount as directed in the conditional order to the local counsel for being deposited to the credit of the suit and the counsel did not issue him receipts for the said payments from 2011 itself. However, surprisingly the petitioners contend that only on 10.03.2015 when they approached their local counsel, he returned the money paid by them for all the four years stating that the second appeal had been dismissed for non-prosecution on 25.01.2011 itself. Such a

contention is far from being a satisfactory explanation for the delay in preferring the petition to set aside the order of dismissal for non-prosecution.

4. The facts and circumstances give rise to an inference that the petitioners, who had the benefit of an interim order, were bent upon enjoying the benefit of the interim order indefinitely by adopting such dilatory tactics. That was the reason why when the second appeal came to be listed for final hearing after 13 years from the date of grant of the interim order, the second appeal was left without any representation leading to the dismissal of the same for non-prosecution. In addition, the very fact that the first respondent has not chosen to take steps and left the second appeal to be pending for more than 13 years and the first respondent has also not chosen to appear in this petition to oppose will give rise to a serious suspicion in the mind of this Court that the authorities are also acting hand-in-glove with the petitioners.

5. This Court is not satisfied with the reason assigned by the petitioner for the inordinate delay in filing the petition to set aside the order of dismissal of the second appeal for non-prosecution. Hence the petition deserves to be dismissed. Accordingly, this petition is dismissed. Consequently, the petition filed for restoration of the second appeal in S.R.No.26600 of 2015 shall stand rejected as out of time.

21.09.2015

gpa

P.R.SHIVAKUMAR.J.,

gpa

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