

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

C.R.P.No.5261 of 2015

ORDER:

This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, 1908 questioning the order, dated 17.11.2015, passed in E.A.No.5 of 2015 in E.P.No.4 of 2015 in O.S.No.42 of 2014 on the file of the I Additional District Judge, Karimnagar.

2. The respondents herein filed O.S.No.42 of 2014 on the file of the I Additional District Judge at Karimnagar against the petitioner herein for declaration of title of property and recovery of possession in respect of land admeasuring 1332.50 square yards in Sy.No.46/C situated at Bommakal Village of Karimnagar Mandal and the same was decreed on 22.12.2014. Respondents filed E.P.No.4 of 2015 in O.S.No.42 of 2014 on the file of the I Additional District Judge, Karimnagar under Order XXI Rule 11(2) C.P.C. to execute the registered sale deed under Order XXI Rule 34 C.P.C. and deliver possession of the E.P. schedule property under Order 21 Rule 35 C.P.C. and the same was decreed *ex parte* on 22.9.2015. Petitioner herein/defendant filed E.A.No.5 of 2015 in E.P.No.4 of 2015 in O.S.No.42 of 2014 under Order IX Rule 7 read with Order XXI Rule 23(2) read with Section 151 C.P.C. to set aside the *ex parte* order, dated 22.9.2015, in the E.P., and the same was dismissed on 17.11.2015 by the impugned order. Challenging the same, the present Revision Petition is filed.

3. Learned counsel for the petitioner stated that the reasons mentioned in the impugned order are unsustainable and as such, the same needs to be set aside.

4. The main ground on which the said application was dismissed

was that on 7.10.2015, the petitioner was informed by his mother about the respondents obtaining the registered document and he has filed this petition on 13.10.2015 with a delay of a week after the said date. It cannot be said that there was an unexplained delay in filing the present Interlocutory Application. Apart from that, the learned trial Court, while dismissing the application, observed that the petitioner might have been watching the proceedings and that only with an intention to harass the respondents, has come up with the present I.A. Relying upon the delivery of gas cylinder on 13.10.2015, the trial Court held that the petitioner herein is staying at the same address to which the notices were served. It appears to be a case where the said E.A. came to be decided basing on conjectures and surmises without strictly following the ingredients of Order IX Rule 7 C.P.C., and hence, the order under challenge is liable to be set aside.

5. Accordingly, the Civil Revision Petition is allowed setting aside the impugned order.

6. It is brought to the notice of this Court, by learned counsel for the petitioner, that I.A.No.585 of 2015 in O.S.No.42 of 2014 filed under Order IX Rule 13 C.P.C. to set aside the *ex parte* decree passed in the suit is still pending consideration.

7. In view of the said submission, there shall be stay of the Execution Petition for a period of four (4) weeks. Meanwhile, the petitioner shall make an appropriate application seeking stay of the E.P. till disposal of I.A.No.585 of 2015 in O.S.No.42 of 2014. There shall be no order as to costs.

8. Miscellaneous Petitions pending, if any, in this Civil Revision Petition shall stand closed.

JUSTICE C.PRAVEEN KUMAR

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DATE: 14.12.2015

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