

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.1845 OF 2015

ORDER:

This Civil Revision Petition is directed against the order dated 19.11.2015 in I.A.No.171 of 2014 in A.S.No.20 of 2010 on the file of the II Additional District Judge, Nalgonda, seeking to condone the delay of 134 days in filing the restoration petition, which was dismissed.

The petitioner/plaintiff filed O.S.No.396 of 2005 before the Junior Civil Judge at Kodad for perpetual injunction to an extent of Ac.1.00 of land in Survey Nos.1098/2 and 1102/2 of Golthanda Revenue Village, Kodad Mandal, Nalgonda District. The suit was dismissed on 15.03.2010. The petitioner filed A.S.No.20 of 2010 on 21.04.2010. On 28.06.2013, the said appeal was dismissed for default. As there was delay, the petitioner filed the present I.A., on 13.12.2013 for condonation of delay in filing the restoration petition. It is stated in the affidavit that the petitioner is an illiterate woman and she trusted her advocate, Sri S. Sarath Babu, who assured that this being the first appeal, there was no requirement of her presence and he would take care of the matter. It is further stated that she is a senior citizen and suffering from Sugar and Blood Pressure. When the petitioner enquired about the matter with her advocate, he informed that the appeal came to be dismissed for default and he would take necessary steps for restoration of the appeal. As he did not take necessary steps, the petitioner engaged another advocate and got the restoration application filed and in that process, the delay had occurred.

Counter affidavit is filed on behalf of the respondent stating that the petitioner executed a gift deed on 09.07.2010 gifting the suit schedule land in favour of her son, by name, Sri Banothu Sharan Naik,

who filed O.S.No.112 of 2010 for perpetual injunction on 13.08.2010 and obtained an *ex parte* injunction in respect of the very same suit schedule property. The respondent contested the matter and got vacated the said order. Thereafter, O.S.No.112 of 2010 was dismissed as withdrawn on 09.12.2013 and the present application was filed on 13.12.2013. It is stated that the appeal suit itself would not be maintainable and further the events i.e., the fact of her executing a gift deed, her son filing an independent injunction suit and obtaining *ex parte* injunction order, thereafter withdrawing the injunction suit and immediately filing the present application for restoration would show that the petitioner is well aware of the legal procedure. Hence, there are no *bona fides* on the part of the petitioner in filing the application for condonation of delay for restoration of the appeal and finally the respondent prayed for dismissal of the petition.

Learned II Additional District Judge, Nalgonda, after considering the respective submissions of the parties, dismissed the application by recording a finding that there are no *bona fides* on the part of the petitioner in filing the petition for condonation of delay for restoration of the appeal. The learned Judge has also opined that inasmuch as there being no subsisting right in the property, the restoration application is devoid of *bona fides* and the same is dismissed.

In the present case, the appeal came to be filed on 21.04.2010. On 28.06.2013, the same was stated to be dismissed for default at 12.50 P.M., recording that the appellant called absent, no representation, respondent ready and sufficient time granted. However, it is not stated anywhere in the order that the appeal came to be adjourned at the instance of the appellant on earlier occasions and the appeal was ripen for hearing.

In the impugned order, what has been recorded is that the

appellant counsel was absent on 28.06.2013 and no prejudice, as such, would have been caused, if an adjournment would have been granted especially considering the fact that the appeal itself was filed on 21.04.2010. The other circumstance which had impressed the learned Additional District Judge is the allegation that the property was gifted by the petitioner/appellant in favour of her son. This aspect of the matter was not denied by the petitioner by filing a reply affidavit/counter affidavit.

At the time of hearing, learned counsel for the petitioner submitted that subsequently, the gift deed itself was cancelled. The effect of cancellation of the gift deed and whether such cancellation would have any bearing on the appeal are the matters required to be considered in the appeal. The issue in I.A.No.171 of 2014 is only in relation to the sufficiency or otherwise of the reasons for the absence of the advocate on 28.06.2013. In these circumstances, as the non-prosecution and negligence are attributed to the petitioner's counsel and that the appeal is in relation to an immovable property, in my view, the delay of 134 days in filing the application for restoration of the appeal ought to have been condoned by putting the petitioner on terms.

Accordingly, the Civil Revision Petition is allowed. The order, dated 19.11.2014, passed in I.A.No.171 of 2014 in A.S.No.20 of 2010 on the file of II Additional District Judge, Nalgoda, is set aside and the delay is condoned subject to the petitioner paying costs of Rs.5,000/- to the respondent. The observations made in the present order are only for the purpose of disposal of the revision petition and they shall not be construed as expressing any opinion with respect to the merits of the matter. The costs shall be paid within two weeks from the date of receipt of a copy of this order, failing which the revision shall stand

dismissed without recourse to any order from this Court. No order as to costs.

The Miscellaneous Petitions filed in the Civil Revision Petition shall also stand disposed of.

CHALLA KODANDA RAM, J

21.09.2015

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