

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.1083 of 2015

ORDER:

Heard the learned counsel for petitioner and the learned counsel for respondents.

2. The first respondent herein filed O.S.No.18 of 2007 on the file of the Court of the Senior Civil Judge, Rayachoty (for short, trial Court) for declaration of title and perpetual injunction in respect of Ac.0-30 cents of land in Circar Kushki D.No.46/4, situated at Chennamukkapalli Village, Rayachoty Mandal, Kadapa District and the same was decreed, by judgment and decree of the trial Court dated 29.09.2007. Against the same, the petitioner herein filed A.S.No.23 of 2009 on the file of the Court of V Additional District Judge, Rayachoty, Kadapa District (for short, appellate Court). The said appeal underwent several adjournments from January, 2010 to November, 2011. The said delay was occurred due to transfer of the Presiding Officer also. However, as a last chance, the appeal was posted on 28.11.2011 for the arguments of the appellant, as written argument arguments were already filed by the first respondent herein. On the said date, the appellant was absent and hence, the appeal was dismissed for default on 28.11.2011. The petitioner herein filed I.A.No.1398 of 2011 for setting aside the order of dismissal dated 28.11.2011 on the sole ground that he was suffering from viral fever and hence he could not give necessary instructions to his Advocate. The first respondent herein filed a detailed counter indicating the dates of adjournments sought for by the petitioner herein on various occasions leading to dismissal of the appeal. The appellate Court dismissed I.A.No.1398 of 201, by its order dated 11.07.2014, on the ground that the reason of viral fever advanced by the petitioner was not supported by any medical evidence either by prescription or by medical bills to show his bona fide. Against the said order, the present Civil Revision Petition is filed.

3. The learned counsel for petitioner submits that though there were technical lapses on the part of the petitioner, the petitioner, who is the appellant, should be given an opportunity to prosecute the appeal. The learned counsel for respondents, on the other hand, submits that in view of several adjournments taken by the petitioner, no latitude should be shown in his favour.

4. I have carefully considered the matter and the dates indicated in the counter filed by the respondents which show that the appeal was adjourned on number of occasions. Since the appellant himself committed default, it resulted in dismissing the appeal. In order to give him an opportunity, this Court is inclined to allow I.A.No.1398 of 2011 on payment of costs of Rs.5,000/- payable to the first respondent herein on or before 31.12.2015. The petitioner shall advance his arguments immediately after reopening the Courts after Pongal Vacation and the appellate Court is directed to dispose of A.S.No.23 of 2009 on or before 31.01.2016.

5. Accordingly, the impugned order of the trial Court dated 11.07.2014 in I.A.No.1398 of 2011 in A.S.No.23 of 2009 is set aside and the Civil Revision Petition is allowed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 03.12.2015

TJMR