

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

CIVIL REVISION PETITION No. 2559 of 2015

Between:

Andhavarapu Govinda Rajulu
..Petitioner

And

1. Raparathi Appalanaidu and another ..
Respondents

DATE OF JUDGMENT PRONOUNCED: **04.08.2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes /
No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes /
No
3. Whether Their Lordship wish to
see the fair copy of the Judgment?
Yes / No

**THE HONOURABLE SRI JUSTICE U.DURGA
PRASAD RAO**

CIVIL REVISION PETITION No.2559 of 2015

ORDER:

This Civil Revision Petition is directed at the instance of petitioner/plaintiff against the Order dated 20.02.2015 in I.A.No.793 of 2013 in O.S.No.44 of 2006 on the file of Principal Junior Civil Judge, Srikakulam, whereby and whereunder the learned Judge dismissed the petition filed by the petitioner under Section 5 of Limitation to condone the delay of 295 days in filing an application under Order IX rule 9 CPC to restore the suit, which was dismissed on 28.08.2012.

2. The revision petitioner, who is the plaintiff in O.S.No.44 of 2006 filed the suit against the respondents/defendants for specific performance of agreement of sale. The said suit was dismissed for default on 28.08.2012. Hence, he filed a petition under Order IX Rule 9 CPC to restore the suit and as there was delay of 295 days in filing the said petition, he filed another petition in I.A.No.793 of 2013 under Section 5 of Limitation Act to condone the delay. Showing the reasons

for the delay, he stated in his affidavit that in the month of March, 2012, he left to Girisola village in Odisha where he got factory business and thereafter due to some disputes with workers, he was held up in Odisha for more than one year and therefore he was unable to contact his counsel and in the meanwhile, the suit was dismissed on 28.08.2012. He submitted that recently his previous counsel returned his file and so he entrusted the matter to another counsel and hence, the petition.

3. Second respondent/second defendant opposed the petition denying the averments in the petition and contended that petitioner left to Girisola village in connection with his factory business and held up there are all false allegations. In fact, the petitioner filed E.P.No.71 of 2012 in O.S.No.04 of 2006 in the Court of Senior Civil Judge, Srikakulam, for delivery of the schedule property and the petitioner was attending the Court regularly in that matter. In the E.P, E.A.No.45 of 2014 was filed and the petitioner filed Counter. It is contended that he has been residing in Srikakulam and he never went to Odisha and held up there. Further, the petitioner is having several cases in different Courts at Srikakulam and he is also having several businesses in Srikakulam Town.

4. Second Respondent further contended that first respondent sold the property to him and later he sold the

same to one A. Appala Satyanarayana , a 3rd party, prior to filing of the suit and who in turn sold away the same to Ramachandra Murthy and these facts were mentioned in the Written Statement. It is also contended that the petitioner has been doing real estate business and he is rich and politically influenced person and he is having sufficient knowledge in Court Proceedings and he maintained several Advocates to conduct his cases and so the question of his being held up in Odisha for more than one year is utterly false. He, thus, prayed to dismiss the petition.

5. The impugned Order shows that trial court having observed that it has given ample opportunity and passed number of conditional orders, ultimately dismissed the suit for default. The trial Court further observed that multiple sale transactions had already taken place with regard to suit schedule property and the plaintiff showed a deliberate negligence in prosecuting the case and therefore the delay cannot be condoned and accordingly, the trial Court dismissed the petition.

6. Heard both sides.

7. Learned counsel for petitioner submitted that there was no willful negligence on the part of the petitioner in remaining absent when the suit was called on 28.08.2012 and as he was held up in Odisha due to his factory works

and as he could not contact his advocate, unfortunate event took place and as his valuable rights are at stake, an opportunity may be given to him to vindicate his rights in the suit. He, thus, prayed to allow the revision and set aside the impugned Order passed by the trial Court.

8. Per contra, the learned counsel for respondent No.2 argued that petitioner never went to Odisha and held up there and on the other hand, he attended the Court at Srikakulam in number of other matters and a multiple sale transactions in respect of the suit property were already taken place and therefore the petition may be dismissed.

9. In the light of the above rival arguments, the point for determination is :

“ Whether there are merits in this petition to allow?”

10. According to petitioner, the prime reason for his absence on 28.08.2012 was due to the fact that he was held up in Girisola village in Odisha in connection with some disputes in his factory affairs. He says that for more than one year he held up at Odisha. On the other hand, the contention of the respondent No.2 is that the petitioner is having number of suits pending in different Courts in Srikakulam and in fact during the relevant period, he filed E.P.No.71 of 2012 in O.S.No.04 of 2006 in the Court of Senior Civil Judge, Srikakulam, for delivery of suit schedule property. In the light of the above counter

averments, the burden is on the petitioner to establish that he was held up at Odisha for more than one year in connection with factory affairs. If he was held up at Odisha in connection with his factory affairs, there is no difficulty to produce some tangible evidence. Except his oral assertion, the petitioner has not produced any document showing that he was having work in Girisola village at Odisha State and in order to attend the said work, he went there and held up. The petitioner could not show any acceptable evidence to substantiate his plea. On the other hand, it appears, he prosecuted some civil matters in different Courts at Srikakulam during the relevant period. He did not dispute about his filing E.P.No.71 of 2012 in O.S.No.4 of 2006 in the court of Senior Civil Judge, Srikakulam. It falsifies his plea that he was held up in Odisha during the relevant period. As per the contention of the respondents, multiple sale transactions with regard to suit schedule property have already been taken place. So, for the reason that the plaintiff did not show sufficient grounds to condone the delay and also for the reason that the property was already changed by hands, the trial Court rightly rejected his petition and I find no reason to interfere with the said Order.

11. Accordingly, this C.R.P is dismissed by confirming the Order dt.20.02.2015 passed in I.A.No.793 of 2013 in

O.S.No.44 of 2006 on the file of Principal Junior Civil Judge, Srikakulam. No costs in the appeal.

As a sequel, miscellaneous petitions pending if any shall stand closed.

U. DURGA PRASAD RAO, J

Date: 04.08.2015
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