

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 2830 of 2015

DATED 31st December, 2015

BETWEEN

Dr. M.Jaya and ors.

...Petitioners

And

Dr. Baba and ors.

...Respondents.

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 2830 of 2015

ORDER:

-

The plaintiffs in O.S.No.42 of 2009 on the file of the learned I Additional District Judge, Medak, at Sanga Reddy, are the petitioners herein. They filed the aforesaid suit for specific performance of agreement of sale dated 6.8.2007. The said suit was decreed *ex parte* on 15.6.2010 directing the petitioners/plaintiffs to deposit the balance sale consideration of Rs.12,80,000/- within one month from the date of the judgment. The said amount was not deposited within the specified time. However, the petitioners/plaintiffs filed application being I.A.No.53 of 2015 under Section 5 of the Limitation Act read with Section 151 CPC to condone the delay of 1643 days in depositing the said amount.

In support of the said application, the petitioners/plaintiffs

filed an affidavit, wherein it was stated that he was fifth plaintiff.

The relevant portion of the affidavit reads as follows:

“ I submit that I and other plaintiffs are filed the suit for specific performance against the defendants. The same was registered above O.S.No.42 of 2009 and the Honourable Court was issued summons to defendants they were not received summons after that Court was given judgment on the day of June, 2010. And as per the judgment plaintiffs are directed to deposit the balance of sale consideration of Rs.12,80,000/- in this Court within one month from the date of this judgment.

3. It is further submit that after judgment I am and other plaintiffs are not deposited amount before this Court because of plain tiff No.4 & 5 are not contacted at that time with me and we tried to trace out the defendants address and after context we will take judgment but even some many years we are try to trace out but there address not found”

In the said application, respondents 1 to 4 did not appear as they refused to receive the notices. In the instant CRP also, despite publication of notice by way of substituted service, none appeared for them.

The learned Counsel for the petitioners submits that the affidavit was sworn in on 24.01.2015 by the sixth plaintiff. As it could be seen from the array of parties in the cause title, they mistakenly typed as fifth plaintiff. The application was dismissed on the ground that no proper reasons were assigned.

The learned Counsel for the petitioners placed reliance on the decision of the Apex Court in KUMAR DHIRENDRA MULLICK AND TIVOLI PARK APARTMENTS (P) LTD {(2005) 9 SCC 262} and submit that in the suit for specific performance, the decree shall be in nature of preliminary decree and the

Court does not become *functus officio* even after grant of decree. He also submits that he and other petitioners could not comply with the condition as they were not in contact with him. When such plea was pleaded by the respondents herein, the Court should have considered the application of the petitioners in the facts and circumstances of the case as it is a suit for specific performance of agreement of sale and an amount of Rs.10,00,000/-(Rupees ten lakhs only) was paid in advance.

In view of the submissions made by the learned Counsel for the petitioners and having regard to the facts and circumstances of the case, this Court is inclined to set aside the order under revision dated. 13.04.2015 and remand the matter to the Court below for passing orders afresh and in accordance with law.

The Civil Revision Petition is allowed to the extent indicated above. Miscellaneous petitions pending consideration if any in the Civil Revision Petition shall stand closed in consequence. No order as to costs.

JUSTICE A. RAMALINGESWARA RAO

DATED 31st December, 2015.

Msnr_x