

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1109 of 2015

ORDER:

This Civil Revision Petition is filed challenging the order dt.04.12.2014 in I.A.No.238 of 2011 in an unnumbered A.S. of 2014 of the III Additional District Judge, Bhimavaram.

2. The petitioner herein is the defendant in the suit O.S.No.285 of 2004 filed by the respondents before the I Additional Junior Civil Judge, Bhimavaram. The said suit had been decreed on 06.08.2008 granting permanent injunction to the respondents against the petitioner.

3. Petitioner filed appeal challenging the said judgment and decree on 31.01.2011 before the III Additional District Judge, Bhimavaram and also filed I.A.No.238 of 2011 under Section 5 of the Limitation Act, 1963 to condone the delay of (874) days in filing the said appeal.

4. In the affidavit filed in support of the said application the only plea raised by the petitioner is that after suit was decreed on 06.08.2015, there was a compromise between the parties in the presence of village elders and thinking that the respondents would not file any execution petition, he had not preferred any appeal against the judgment and decree dt.06.08.2008. He alleged that contrary to the said compromise, the respondents filed

E.P.No.74 of 2010 before the I Additional Junior Civil Judge, Bhimavaram and only after he came to know of it, he filed the appeal.

5. Counter affidavit was filed by the respondents opposing this application. They contended that there was no compromise as alleged by the petitioner after the suit was decreed; the petitioner had obtained certified copy of the judgment and decree on 23.07.2010 and even then he filed the appeal only on 31.01.2011 and for the said delay, the petitioner has not shown sufficient cause. They also stated that the petitioner had filed E.A.No.730 of 2010 to set aside the order dt.28.11.2010 setting him ex parte; even though the said EA was filed on 01.12.2010, he filed the appeal on 31.01.2011; that the petitioner is aware of the decree and wantonly did not take any steps to challenge the judgment and decree of the Court below.

6. By order dt.04.12.2014, the Court below dismissed the said application.

7. It held that the petitioner had not shown any bonafide reason for condonation of delay and had wilfully and negligently filed this application in a routine manner. It further held that the petitioner took seven months for filing vakalat in the E.P. on 05.07.2010 and had acted negligently.

8. Questioning the said order, this Revision is filed.

9. Counsel for the petitioner contended that the order passed by the Court below is vitiated by error of jurisdiction and that the Court below should have believed the petitioner's version that there was a compromise after the suit was decreed and that was why the petitioner did not prefer any appeal challenging the decree within the prescribed time.

10. I am unable to agree with the said submission because in the affidavit filed in support of I.A.No.238 of 2011, the petitioner has not mentioned the date on which the compromise was entered into or the terms thereof or the names of the persons whose intervention resulted in compromise. He has also not examined any witness in support of his plea that there was a compromise subsequent to the decree. In the absence of any material placed before the Court below in support of the plea of compromise, it cannot be said that the petitioner had shown sufficient cause for condonation of inordinate long delay of (874) days in filing the appeal challenging the judgment and decree dt.06.08.2008 in O.S.No.285 of 2004 of the I Additional Junior Civil Judge, Bhimavaram. It is also not disputed by the petitioner that he, having engaged a counsel in E.P.No.74 of 2010 filed by the respondents on 05.07.2010, did not even choose to file counter, and he still waited till 31.01.2011 to file the appeal with the application for condonation of delay.

11. Having regard to the above facts and circumstances, it cannot be said that there is any error committed by the Court below in refusing to condone (874) days long delay in preferring the appeal.

12. So, the Civil Revision Petition is dismissed. There shall be no order as to costs.

13. Consequently, miscellaneous petitions pending, if any, in this appeal shall stand closed. No costs.

M.S.RAMACHANDRA RAO, J

04th September, 2015.
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