

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.2060 of 2015

Date: 23-12-2015

Between:

Nimmagadda Annapurna

.. Petitioner

AND

Maganti Ramana Kumar

.. Respondent

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.2060 of 2015

ORDER:

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The plaintiff is the petitioner herein. She filed O.S.No.744 of 2007 on the file of II Additional District Judge, Ranga Reddy at L.B. Nagar for declaration of title and recovery of possession. In the said suit, PWs.1 and 2 were examined and cross-examination was also conducted by the defendant. After completion of evidence of PW.2, the plaintiff wanted to examine her vendor as CW.1 and filed a petition to summon the vendor. The summons could not be served. Thereafter, a petition appears to have been filed by the plaintiff for calling the vendor as Court witness and served a copy of the petition on 12-08-2010 to the learned counsel for the defendant with information that he would inform the counsel with regard to the next date of hearing over telephone. But, that date of hearing was not informed to him and the learned counsel for the defendant was

under the impression that the case would come up for appearance of the vendor as a witness, but the defendant came to know about passing of the decree in the suit on 20-12-2010 as he received a caveat notice from the counsel for the plaintiff on 27-01-2011. In those circumstances, he filed I.A.No.789 of 2011 in O.S.No.744 of 2007 on 24-03-2011 seeking condonation of delay of 92 days for setting aside the order dated 20-12-2010. The petitioner herein filed a counter to the application seeking condonation of delay without specifically denying the averments made by the defendant in his affidavit. She simply stated that the averments made in paras 8 to 13 are false. In those circumstances, the trial Court passed the following order as follows:

“.....It is the contention of the petitioner that there is a delay of 92 days in filing the application U/O 9 Rule 13 CPC and as petitioner was under the wrong impression that the matter is posted for further evidence of the plaintiff, in view of the circumstances urged by the petitioner narrating that this Court was not functioning during the relevant period and it was placed in charge of another officer, it is a fit case to allow the petition condoning the delay of 92 days in filing order 9, rule 13 CPC petition, accordingly, the petition is to be allowed on terms.

In the result, the petition is allowed condoning the delay of 92 days in filing the Order 9 Rule 13 CPC petition to set aside the ex parte decree and the petitioner is directed to pay costs of Rs.500/- to DLSA, R.R. District within 15 days from the date of this order and in case of his failure, the petition stands dismissed. In case the petitioner comply the order the petition in I.A.No.790 of 2011 filed u/o 9 rule 13 CPC stands restored.”

and allowed the application for condoning the delay of 92 days in making the application to set aside the ex parte decree.

Learned counsel for the petitioner placed reliance on a decision of this Court reported in **D. Vidya Bai and others v. Anil Kumar R. Kamdar and others** and submitted that the delay of 10 days in filing the petition to set aside the ex parte order was not condoned by this Court and the delay of 92 days in a case of this nature should not have been condoned. He also submitted that the Court below gave a finding in the order as extracted, contrary to the record.

The case relied on by the learned counsel for the petitioner arose out of the proceedings under A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 and the facts of that case are different. Since the learned District Judge has stated that during relevant point of time, the court was placed in charge of another officer, there is no material to show that the said observation was not correct. Even otherwise, the petitioner did not specifically deny the averments made by the respondent herein in para-8 of the affidavit filed in support of the application seeking for condonation of delay showing the grounds for delay. In the circumstances, since the order passed by the lower Court is a discretionary order, keeping in view the overall facts and circumstances of the case, the order dated 19-02-2015 passed in I.A.No.789 of 2011 in O.S.No.744 of 2007 does not warrant any interference and hence, the civil revision petition is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 23-12-2015

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