

HON'BLE SRI JUSTICE S. RAVI KUMAR
CIVIL REVISION PETITION No.2955 of 2015

ORDER:

This revision is preferred against order dated 26.11.2014 in I.A.No.478 of 2012 in O.S.No.24 of 2006 on the file of Senior Civil Judge at Medak.

2. Brief facts leading to this revision are as follows:

O.S.No.24 of 2006 is filed for specific performance of agreement of sale dated 27.09.2005 said to have been executed by revision petitioner for sale of Ac 7.02 guntas in Sy.No.96 situated at Chintakunta village of Andole Mandal, Medak District. Revision petitioner herein filed written statement disputing execution of agreement of sale dated 27.09.2005 and trial Court after framing proper issues proceeded with the trial, wherein four witnesses were examined on behalf of the plaintiffs and thereafter revision petitioner is examined as DW.1 in chief and got marked Exs.B1 to B3, and as he failed to appear before the Court for cross-examination, trial Court set him ex parte and decreed the suit in favour of plaintiffs on ex parte basis, and the revision petitioner herein filed above referred I.A.No.478 of 2012 seeking condonation of delay of 827 days in filing petition under Order 9 Rule 13 CPC contending that he fell sick and was bedridden due to Anti-Tuberculoid Treatment and for that reason, he could not file an application in time and that application was opposed by the plaintiffs and trial Court on consideration of contentions and rival contentions of both parties, dismissed the application holding that petitioner failed to explain the delay of 827 days properly and aggrieved by the dismissal of the application, present revision is preferred.

3. Heard both sides.

4. Advocate for revision petitioner submitted that revision petitioner is very much interested in prosecuting the case but due to ill health he could not appear before the Court for continuation of his evidence and trial Court decided the matter on ex parte basis though PWs.1 to 4 were cross- examined on behalf of revision petitioner and execution of sale agreement is denied. He submitted that revision petitioner filed medical record for the ill health and treatment taken by him at Huma General Hospital, MNR Medical college and Hospital and Aditya Hospital, but the trial Court, without properly considering the medical certificates and O.P tickets observed that revision petitioner has not properly explained long delay of 827 days. He further submitted that by fixing some time schedule for completion of the evidence on defendant side, an opportunity may be given to the defendant to prove his contention in respect of specific performance relief claimed by the plaintiff. He further submitted that trial Court passed order without looking into the medical record and the said order has to be set aside.

5. On the other hand advocate for respondent vehemently opposed the claim of the petitioner and submitted that all the medical certificates and O.P. tickets are long after decree passed by the trial Court and the trial Court has rightly discarded them. He submitted that ex parte decree was passed on 30.04.2010 and the certificate issued by Aditya hospital is dated 29.8.2012, wherein it is recorded that the petitioner was admitted in hospital on 08.03.2011 and discharged on 14.03.2011. He submitted similarly other documents issued by MNC medical college and Huma Maternity and General Hospital are all subsequent to the passing of ex parte decree. He further submitted that after passing of the decree, plaintiffs have deposited balance sale

consideration to the credit of the suit and also filed E.P and only after filing of E.P., petitioner has come forward with present application only to harass the plaintiffs. He submitted that the trial Court rightly dismissed the application and there are no grounds to interfere with the findings of the trial Court.

6. Now the point that would arise for my consideration is :

“Whether the order of trial Court is legal, correct and proper?”

POINT:

7. As seen from the material, the suit is filed seeking specific performance of agreement of sale dated 27.09.2005 and defendant filed written statement disputing execution of sale agreement. During trial, four witnesses were examined on behalf of plaintiffs and 5 documents are marked and on defendant side, DW.1 was examined in part and Exs.B1 to B3 were marked, and at that stage, defendants were set ex parte as they failed to appear before the Court and produce any evidence in support of their plea. According to revision petitioner, on 25.3.2009 he filed his chief affidavit and thereafter due to some ailment he was bedridden and he could not appear before the Court on 03.03.2010 to which date the suit was posted for cross-examination and that he came to know about passing of ex parte decree only on receiving notice in E.P., which was served in 2012, and then he filed application to set aside ex parte decree with a delay condonation petition.

8. According to petitioner he took Herbal treatment at various places upto May 2010 and as he could not get any relief, he took treatment at MNR hospital, Huma Hospital and Aditya Hospital from May 2010 to August 2012. According to petitioner, because of that ailment, he could not file the application in time

thus there was delay of 827 days. To support his contention, he produced certificate issued by Huma General Hospital, MNR Medical college and Hospital and Aditya Hospital. Plaintiff disputed the affidavit averments of the revision petitioner and according to plaintiff, the petitioner was in good health and he never became sick and he has not suffered any back pain or any other ill health and that he was not bedridden. It is further contended by the plaintiffs that petitioner has not undergone any treatment in any hospital and only after receipt of notice in E.P., application is filed to harass the plaintiff.

9. From the medical documents filed on behalf of revision petitioner, the fact remains that the petitioner took treatment at various hospitals. Petitioner specifically averred in his affidavit that he took some herbal treatment for this ailment up to May 2010 and as he did not get any relief, he approached the above referred three hospitals. Plaintiffs except denying the averments of affidavit, has not placed any positive material to doubt the certificates issued by three different hospitals.

10. As rightly pointed out by advocate for revision petitioner, trial Court without properly looking into the medical documents, discarded them on the ground that relevant prescriptions are not filed to corroborate the contents of the medical certificates issued by the hospitals. But the approach of trial Court cannot be appreciated because three different hospitals certified about ailment of the petitioner and treatment to his ailment. It is for the other side to rebut with proper evidence and when there is no such rebuttal evidence, discarding such documents on the ground that supporting prescriptions are not filed, in my view, is not a correct approach. Considering the facts of the case and nature of dispute in the suit, I feel that trial Court

ought to have given an opportunity to revision petitioner to prove his claim in the suit.

11. For these reasons, I am of the view that the delay of 827 days has to be condoned on payment of costs of Rs.5,000/- (Rupees five thousand only) by revision petitioner to plaintiff within a period of two weeks and on such payment the trial Court shall allow the application in IA No.478 of 2012 and application to set aside the ex parte decree dated 30.04.2010 and proceed with the matter from the stage where it was left. Revision petitioner shall produce his evidence and complete it within three months from the date of setting aside the ex parte decree. The trial court should complete trial and dispose of suit within a period of four (04) months from the date of restoring the suit.

12. Accordingly, this Civil Revision Petition is allowed. No costs. Miscellaneous Petitions, if any pending, in this petition, shall stand closed.

S. RAVI KUMAR, J

Date: 04-09-2015.

gvl