

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.4808 of 2013

ORDER:

This Revision is filed challenging the order dt.26-06-2013 in I.A.No.4059 of 2012 in A.S.S.R.No.9947 of 2009 of the Principal District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad.

2. The petitioner herein is defendant in O.S.No.989 of 2003 on the file of the III Additional Senior Civil Judge, Fast Track Court, Ranga Reddy District at L.B. Nagar. The said suit was filed by respondent against him for specific performance of an agreement of sale dt.29-09-1999.
3. The petitioner received summons in the suit, engaged a counsel and even filed written statement disputing the suit claim. However, the petitioner did not adduce any evidence and no arguments were advanced on his behalf. This resulted in the suit being decreed on 25-03-2008.
4. The petitioner filed A.S.S.R.No.9947 of 2009 before the Principal District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad on 06-07-1999. On 17-09-1999, he filed I.A.No.4059 of 2012 in the said appeal seeking condonation of delay of 413 days in presenting the appeal.
5. In the affidavit filed in support of the said application, he stated

that he was seriously ill from 15-03-2008 and was confined to bed due to acute jaundice; he took Ayurvedic medicine, which resulted in ulcers; Doctors advised him to take complete bed rest for 7 months; so he could not contact his counsel and did not know the passing of the decree. He stated that subsequently also he fell sick on account of stones in his urinary bladder, due to which he suffered for eight months. He claimed that he did not have money and could not undergo operation and was dependent on ayurvedic drugs. He stated that therefore he did not attend the Court and did not know about the proceedings of the case. He claimed that after recovering from his illness, in 2nd week of June, 2009, he contacted his counsel and came to know that the suit was decreed *ex parte*, that he then applied for certified copy of the judgment and decree on 11-06-2009, which was furnished to him on 03-07-2009, and preferred appeal on 06-07-2009. He therefore prayed that the delay of 413 days in filing the appeal, be condoned.

6. Counter affidavit was filed by respondent opposing this application and contending that this application is filed only to drag on the proceedings. Respondent stated that the learned counsel for petitioner had taken several adjournments and reported before the trial Court that petitioner was not coming to him and sought adjournment to enable him to give notice to petitioner; that he later represented before the trial Court that in spite of notice, the petitioner did not turn up and filed proof of sending notice together with a memo; since the petitioner did not turn up and did not submit any arguments, the trial Court had no choice except to pronounce judgment on 25-03-2008. He denied the averments made by petitioner in I.A.No.4059 of 2012 and

contended that actual delay is in fact 488 days and there is no proper explanation given for the delay.

7. Before the Court below, the petitioner examined himself as P.W.1 and marked Exs.A-1 to A-6.
8. By order dt.26-06-2013, the Court below dismissed I.A.No.4059 of 2012. It referred to the contentions of the parties and held that though petitioner had pleaded that he was suffering from jaundice and had to undergo ayurvedic treatment and later he was affected with ulcer, in cross-examination, the petitioner himself stated that in March, 2008 he met with an accident and his right leg was fractured, which is a new plea not raised in the affidavit filed in support of I.A.No.4059 of 2012. It further held that Ex.A-1 certificate dt.31-03-2008 indicates that the petitioner was inpatient only from 25-03-2008 to 31-03-2008 in Sri Vidya Multi Speciality Hospital suffering from alcoholic hepatitis; Ex.A-2 certificate dt.28-10-2008 also indicated that he was admitted in the same hospital for acute gastritis from 18-10-2008 to 28-10-2008; these two documents indicated that petitioner was hospitalized only for about a week and ten days; even though his treatment concluded by October, 2008, he filed the appeal only on 06-07-2009; and for this intervening period no evidence is adduced to prove that petitioner was suffering from any ailment. It held that the other documents filed by petitioner pertain to period subsequent to filing of petition and are not relevant. It observed that petitioner had acted with gross negligence and did not make out any sufficient cause for condoning the delay of 413 days in filing the appeal.
9. Challenging the same, this Revision is filed.

10. Learned counsel for petitioner Sri N.Vasudeva Reddy contended that the petitioner had a good case on merits since the suit for specific performance is filed by respondent in 2003 to execute the agreement of sale dt.29-09-1999 without issuing any notice prior to filing of the suit and therefore the suit itself was barred by limitation. He further contended that after filing of suit, there was a compromise between the parties on 01-02-2006, in which the petitioner agreed to execute a regular sale deed in favour of respondent for Ac.2.00 and ignoring this fact, decree for Ac.3.00 was granted by the trial Court. He contended that no doubt there were some difficulties faced by petitioner in taking steps to file the appeal within time, but since the petitioner has a good case on merits, the delay of 413 days in filing the appeal, be condoned.
11. Learned counsel for respondent Sri K.Sunil Goud, on the other hand, refuted the above contentions and supported the order passed by the Court below.
12. I have noted the submission of both sides.
13. There is no dispute that the suit for specific performance filed by respondent against petitioner was decreed on 25-03-2008 by the
III Additional Senior Civil Judge, Fast Track Court, Ranga Reddy District at L.B. Nagar. It is not disputed that the petitioner, having filed written statement, did not lead any evidence and did not address any arguments resulting in the suit being decreed. In the affidavit filed in support of I.A.No.4059 of 2012, the petitioner pleaded that he was suffering from jaundice and subsequently from an ulcer, but in his cross-examination, he stated that he met

with an accident in March, 2008. Exs.A-1 and A-2 are certificates issued by Sri Vidya Multi Speciality Hospital, which indicate that he was inpatient in the said hospital from 25-03-2008 to 31-3-2008 and 18-10-2008 to 28-10-2008. Although his treatment concluded by October, 2008, the petitioner filed the appeal only on 06-07-2009 and no material is placed on record to show that he was disabled in any way from preferring the appeal within time. Having engaged a counsel and filed written statement, it is the duty of the petitioner to know the fate of the suit and it is his duty to contact his counsel and find out about the fate of the suit, but it is clear that he did not bother about the suit.

14. As regards the contentions raised by the learned counsel for petitioner in this Court referred to supra are concerned, it is not proper to express any opinion thereon, but the fact remains that in its judgment dt.25-03-2008 in O.S.No.989 of 2003, the III Additional Senior Civil Judge, Fast Track Court, Ranga Reddy District at L.B. Nagar considered the question of limitation and held that the suit was within time. He also considered the plea of compromise on 01-02-2006.

15. Since the petitioner has exhibited gross negligence in failing to contest the suit properly and in failing to file the appeal within the time permitted by law, and since the cause given by petitioner in the application seeking condonation of delay has not been established,

I am of the view that sufficient cause has not been shown by petitioner for condoning the delay of 413 days in filing the appeal and the Court below had rightly rejected I.A.No.4059 of 2012.

16. Therefore, the Revision fails and it is accordingly dismissed. No

costs.

17. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 21-09-2015

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