

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Civil Revision Petition No.2086 of 2015

Between:

Sanapala Madhava Murali Mohan Krishna

.... Petitioner

Vs.

Varanasi Janardhana Rao

.... Respondent

DATE OF JUDGMENT PRONOUNCED: 21.08.2015.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments?
- 2 Whether the copies of judgment may be marked to Law Reports/Journals
- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Civil Revision Petition No.2086 of 2015

ORDER:

Heard Sri T.D.Phani Kumar, Learned Counsel for the petitioner, and Sri Ch.Shanmukha Rao, Learned Counsel for the respondent; and, at their request, the CRP is disposed of at the stage of admission.

The petitioner herein is the petitioner in I.A.No.439 of 2012 and the defendant in O.S.No.247 of 2010. The Suit in O.S.No.247 of 2010 was filed for redemption of the mortgage. The chief-affidavit of the plaintiff as PW.1 was filed on 24.11.2010. He was subsequently cross-examined on 21.06.2011 and the matter was posted to 04.07.2011 for evidence of the defendant. The matter stood adjourned thereafter to 12.07.2011, 19.07.2011 and finally to 26.07.2011 and, on

the ground that he had failed to let in evidence, he was set *ex parte*, and the Suit was decreed on 27.07.2011.

The present I.A. was filed to condone the delay of 35 days in filing a petition under Order 9 Rule 13 CPC. The Court below found loopholes in the affidavit filed by the petitioner, and held that each day delay was not explained. The I.A was dismissed.

The delay in filing the petition, under Order 9 Rule 13, CPC. is of 35 days. It is not so inordinate as to justify not setting aside an *ex parte* decree. While the delay must, undoubtedly, be explained, the Court below ought not to have taken a hyper-technical view more so when the delay was of merely 35 days. Further, as can be seen from the preliminary decree passed in O.S.No.247 of 2010 dated 27.07.2011, the Court below has not even taken into consideration the cross-examination of PW.1.

Sri Ch.Shanmukha Rao, Learned Counsel for the respondent, would, however, contend that the petitioner is needlessly procrastinating, and is dragging on the proceedings only to avoid a decree being passed. With a view to protect the interest of the respondent as well, I consider it appropriate to set aside the order of the Court below, condone the delay of 35 days in filing the petition, and direct the Court below to decide the application, filed under Order 9 Rule 13 CPC, in accordance with law. The delay of 35 days is condoned on condition that, on the Suit being restored to file, the petitioner herein shall commence and complete the evidence on his side, within two months thereafter, failing which it is open to the Court below to proceed and decide the Suit in accordance with law.

The Civil Revision Petition is, accordingly, disposed of. The Miscellaneous Petitions, if any pending, shall also stand disposed of. No costs.

(RAMESH RANGANATHAN, J)

Date:21.08.2015.

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