

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.3011 of 2015

ORDER :

This Revision is filed under Section 115 C.P.C. challenging the order dt.02.07.2015 in I.A.No.1117 of 2011 in an un-numbered Appeal Suit of 2011 (CFR No.4059 dt.23.07.2011) on the file of District Judge, Prakasam, at Ongole.

2. The petitioner herein is defendant in O.S.No.45 of 2005 on the file of Principal Senior Civil Judge, Ongole. The said suit was filed against him and another for recovery of possession of the suit schedule item No.2 as per the plaint plan.
3. The suit was decreed *ex parte* on 27.09.2006.
4. Thereafter, E.P.No.123 of 2008 was filed by 1st respondent for execution of the said decree.
5. The petitioner filed an application under Section 47 C.P.C. and also another application under Order 21, Rule 26 C.P.C. by engaging Sri N. Mohan Das, Advocate, Ongole. He also filed O.S.No.88 of 2010 before the Additional Senior Civil Judge, Ongole for specific performance of an agreement of sale against 1st respondent alleging that 1st respondent had executed the agreement of sale in his favour on 03.03.2005.
6. In the year 2011, the petitioner filed the appeal challenging the decree passed in O.S.No.45 of 2005, and he also filed

I.A.No.1117 of 2011 under Section 5 of the Limitation Act, 1963 to condone the delay of (1645) days in filing the appeal.

7. In the affidavit filed in support of the said application, the petitioner set out the above facts and contended that at the time of hearing of E.P.No.123 of 2008 and the applications filed by him under Section 47 C.P.C. and Order 21 Rule 26 C.P.C, the counsel for petitioner had advised the petitioner to challenge the *ex parte* decree dt.27.09.2006 in O.S.No.45 of 2005; and therefore, he has filed the appeal and since he has good grounds for succeeding in the appeal, the delay in filing the appeal be condoned. He also stated that he had acted in accordance with the advise of his counsel.
8. Counter-affidavit was filed opposing this application, pointing out that written statement had been filed by petitioner in the suit admitting that he is accepting the *ex parte* decree and pleading that there was a subsequent agreement of sale; that filing of this application was an abuse of process of Court, and it was only done to obstruct the execution of a valid decree.
9. By order dt.02.07.2015, the Court below dismissed the said application with costs. It referred to the various proceedings between the parties and held that when O.S.No.45 of 2005 was filed the petitioner, as defendant, he had taken a plea in the written statement that he obtained an agreement of sale from 1st respondent; and at that time, no suit for specific performance of the agreement of sale was filed and only O.S.No.45 of 2005 was contested; if there was any compromise between the parties subsequent to the decree in the suit and an agreement was executed in petitioner's favour, that would have been recorded

by the Court. The court below referred to the filing of counter in the E.P., and also E.A.No.331 of 2009 under Section 47 C.P.C. by petitioner and observed that petitioner had filed the suit for specific performance in O.S.No.88 of 2010, five years after the date of the alleged agreement of sale, that has also filed various applications in the E.P., and this was done only to stall the execution proceedings; that E.A.No.331 of 2009 filed under Section 47 C.P.C. was dismissed by the trial court and C.R.P.No.427 of 2010 filed against it was also dismissed on 05.02.2010, and only thereafter O.S.No.88 of 2010 was filed by petitioner. It also took note of the fact that petitioner had filed applications to set aside the *ex parte* decree and for condoning the delay vide I.A.No.224 of 2010 and I.A.No.226 of 2010, and that both were dismissed; that the explanation offered by petitioner seeking condonation of delay in filing the appeal is farcical because even to the knowledge of petitioner several applications had been filed prior thereto and were contested; and that petitioner is an unscrupulous person litigating the matter to cause loss to respondents and he did not deserve any sympathy.

10. Challenging the same, the present Revision is filed.
11. Heard Sri K. Kiran Mayee, counsel for petitioner; and Sri Y.V. Anil Kumar, counsel for 3rd respondent.
12. Although the counsel for petitioner contended that the reasons given by the Court below for dismissing I.A.No.1117 of 2011 cannot be accepted, I am unable to agree with the said submission.

13. Admittedly, the petitioner filed written statement in the suit, but remained *ex parte* in the suit and suffered an *ex parte* decree on 27.09.2006. Thereafter, the 1st respondent filed E.P.No.123 of 2008 for execution of the decree, and the petitioner filed a counter therein. Apart from that, petitioner had also filed an application E.A.No.331 of 2009 under Section 47 C.P.C. The said application was dismissed and was confirmed by the High Court in CRP.No.427 of 2010 dt.05.02.2010. The petitioner had also filed I.A.Nos.224 and 226 of 2010, seeking condonation of delay in seeking to set aside the *ex parte* decree and also to set aside the *ex parte* decree, but both were dismissed. Admittedly, the petitioner had filed O.S.No.88 of 2010 seeking specific performance of an agreement of sale also.
14. From the above conduct of petitioner, it is clear that petitioner was fully aware of the decree in the suit and was trying to stall the execution of decree by filing the above referred applications, suit, etc. It is not right on the part of petitioner to blame the legal advice he got as the reason for delay in filing the appeal. When an appeal against the judgment in O.S.No.45 of 2005, (which was decreed on 27.09.2006), should be filed within (30) days before the District Court, the petitioner filed the appeal almost five years after the decree was passed.
15. I am of the opinion that the Court below had rightly held that the conduct of petitioner was not been *bona fide*, and sufficient cause was not shown by petitioner for filing the appeal with delay.
16. I, therefore, do not find any merit in the Revision and it is accordingly dismissed. No order as to costs.

17. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23.09.2015

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