

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4704 of 2014

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.25.09.2014 in IA.No.2303 of 2012 in OS.No.316 of 2010 on the file of Senior Civil Judge, Kadapa.

2. The petitioner herein is 1st defendant in the above suit which was filed by 1st respondent herein for a declaration of his title in respect of plaint schedule property, for recovery of possession thereof and for a mandatory injunction against petitioner and 2nd respondent to remove cement road laid in the plaint schedule property.

3. Summons in the suit were served on petitioner/Corporation. Its Standing Counsel filed Vakalat on 23.11.2010 and sought time to file a written statement. Time was granted till 21.01.2011. On that day, further time was sought and the matter was adjourned to 28.02.2011. Again time was sought and time was granted till 16.03.2011. On that day also the petitioner did not file a written statement and there was no representation on its behalf. Therefore, the petitioner was set *ex parte* and the matter was posted for plaintiffs' evidence.

4. On 19.04.2011, the 1st respondent/plaintiff got

himself examined as PW.1 and marked Exs.A.1 to A.5.

5. On 24.08.2011, an *ex parte* decree was passed.

6. Thereafter, petitioner filed IA.No.2303 of 2012 on 11.06.2012 under Section 5 of the Limitation Act, 1963 to condone the delay of (292) days in filing an application under Order IX Rule 13 CPC, and also another application under Order IX Rule 13 CPC to set aside the *ex parte* decree dt.24.08.2011, passed in the suit.

7. In the affidavit filed in support of this application it is stated that non-filing of written statement by petitioner was on account of securing of material documents, since the plaint schedule property was previously owned by APSRTC and third party; there was correspondence between APSRTC and petitioner because of which the petitioner could not supply the para-wise remarks to Standing Counsel for filing written statement into the Court; there was a by-election to Parliamentary Constituency of Kadapa and also for preparation of voters' list for local body elections; therefore, the petitioner was unable to take steps in the above suit, resulting in delay of (292) days in filing this application; and that the Corporation had a good case on merits and the delay occurred only due to administrative work and was not intentional and willful. To show its bonafides, the written statement prepared on behalf of petitioner was also filed along with the said IA.No.2303 of

2012. It was contended that public interest would suffer if the delay is not condoned.

8. Counter-affidavit was filed by 1st respondent opposing condonation of delay and denying the allegations of petitioner. The 1st respondent contended that no documents have been filed by petitioner in support of its pleadings in the said IA and that when Government body utilizes or acquires property of general public there would be proceedings such as public notice in the newspaper or by issuing notice to the party calling for objections; that petitioner has not explained the delay properly; and since petitioner had number of employees working for it, it was not difficult for petitioner to obtain documents which it seeks within hours.

9. By order dt.25.09.2014, the court below dismissed IA.No.2303 of 2012. Before the court below it was argued that the earlier Standing Counsel had resigned and petitioner was not aware of passing of the decree. The court below held that in the absence of any document filed by petitioner to prove the correspondence between it and APSRTC, its plea cannot be accepted; even if public funds are involved, if the cause shown for the delay is not sufficient, the delay could not be condoned; that petitioner was not able to show that persons employed by it who were dealing with legal matters were also deputed on election duties and that petitioner had not filed any letter or

affidavit of its counsel, who is alleged to have resigned after filing the Vakalat.

10. Questioning the same, this Revision is filed.

11. Heard the counsel for petitioner and Sri V.R. Reddy Kovvuri, counsel for 1st respondent.

12. The counsel for petitioner contended that petitioner had a substantial defence in the suit and that it had laid a road after obtaining the subject property from APSRTC and another parcel of land from one P. Chandra Obul Reddy by expending public money and that petitioner's vendors had no title to the subject property since they had sold the said property in 1995 itself to one P. Chandra Obul Reddy under a registered sale deed dt.25.03.1996 and also delivered possession of the property; that the earlier standing counsel who had appeared for the Corporation had resigned and that was why there was no representation on behalf of petitioner on 28.04.2011; that the delay in filing the application occurred on account of difficulty in procuring the documents from APSRTC and from the private parties viz., P. Chandra Obul Reddy, apart from responsibility for holding the elections for the Parliamentary Constituency of Kadapa and preparation of voters' list for local body elections; that bonafides of petitioner are shown by the fact that petitioner had also filed the written statement along with the application under

Section 5 of the Limitation Act, 1963 along with IA.No.2303 of 2012 and so the delay ought to have been condoned by trial court.

13. The counsel for 1st respondent refuted the said contentions and contended that there has been negligence on the part of officials of petitioner-Corporation in taking steps to set aside the *ex parte* decree, and such negligence cannot be condoned.

14. It is settled law that the power to condone delay conferred on this Court under Section 5 of the Limitation Act, 1963 is to be exercised liberally and that the length of delay is no matter, but the acceptability of explanation, is the criteria. (see **N. Balakrishnan v. M.**

Krishnamurthy^[1]). I am satisfied that the petitioner has acted bonafidely and due to the reasons mentioned by it in the IA, it could not file application under Order 9 Rule 13 CPC in time.

15. I have also perused the written statement of petitioner-Corporation which was produced by counsel for petitioner and a reading thereof indicates that there is substantial defence for petitioner to the suit claim and it appears that public interest is also involved, since a road has been laid by petitioner-Corporation in the subject property.

16. Having regard to these facts, although there is

some delay on the part of petitioner in taking steps to set aside the *ex parte* decree, I am of the opinion that it is a fit case to condone the delay of (292) days in filing the application under Order IX Rule 13 CPC, subject of course, to the petitioner-Corporation compensating the 1st respondent by way of costs.

17. In this view of the matter, the order dt.25.09.2014 in IA.No.2303 of 2012 in OS.No.316 of 2010 on the file of Senior Civil Judge, Kadapa is set aside; the said IA is allowed subject to petitioner depositing costs of Rs.5,000/- to the credit of said suit within a period of eight (08) weeks from to-day; on such deposit, the 1st respondent is entitled to withdraw the same without furnishing any security. In default of deposit of costs as aforesaid, this Revision shall stand dismissed without further reference to the Court. Accordingly, the Civil Revision Petition is allowed.

18. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-03-2015

Ndr/*

[\[1\]](#) (1998) 7 SCC 123