

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRP Nos.4722 & 4723 of 2014

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Date:12.06.2015

CRP No.4722/2014

Between:

Vadla Narayana

... Petitioner.

AND

Vadla Venkatesh and others.

...Respondents.

CRP No.4723/2014

Between:

Vadla Yadamma @ Prameela

... Petitioner.

AND

Vadla Venkatesh and others.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRP Nos.4722 & 4723 of 2014

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COMMON ORDER:

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These two revisions are preferred against order dated 30-10-2014 passed by the Senior Civil Judge, Sanga Reddy in two different interlocutory applications filed in O.S.No.309/2007.

2. Revision petitioners herein are defendants 1 & 2 in O.S.No.309/2007 and respondents 1 & 2 in both the revisions are plaintiffs and they are hereinafter referred to as plaintiffs and defendants as arrayed in the suit for convenience sake.

3. Brief facts leading to filing of these revisions are as follows:-

Plaintiffs filed O.S.No.309/2007 for partition of suit schedule property and separate possession in which revision petitioner in CRP No.4722/2014 is D1 and revision petitioner in CRP No.4723/2014 is D2. These two revision petitioners filed I.A.Nos.252 & 253/2011 respectively to condone delay of 1,026 days in filing application under Order 9 Rule 13 CPC and the trial Court dismissed both the applications holding that there are no sufficient grounds to condone long delay of 1026 days. Aggrieved by the dismissal of the applications, these two revisions are preferred.

4. Heard both sides.

5. Advocate for revision petitioners submitted that Court

below erred in rejecting the medical certificates and prescriptions filed in support of the reasons stated for the delay of 1026 days. He further submitted that the Court below failed in following principles of natural justice, which require fair opportunity to the parties to contest the suit more particularly when the nature of suit is for partition. He submitted that lower Court, instead of taking liberal approach, considered the applications with prejudicial mind and therefore, the order of the Court below is liable to be aside. It is further contended that petitioners/ defendants engaged an Advocate and due to illness of one of the petitioners i.e., D1, they could not contact their counsel and for that reason, he could not file the written statement, but without considering the same, the trial Court dismissed the applications and orders of trial Court are liable to be set aside.

6. On the other hand, Advocate for respondents/ plaintiffs submitted that trial Court granted reasonable opportunity to file written statement, but in spite of that petitioners have not utilised the same and that there is no iota of truth in the contentions raised by the revision petitioners and that there are no valid grounds to condone long delay of 1026 days and the trial Court rightly dismissed the applications.

7. Now the point that would arise for my consideration in these revisions is whether the impugned orders of the Court below are legal, proper and correct?

8. **Point:-** Both the revision petitioners herein are

husband and wife and averments of affidavit filed in support of the delay condonation petition is that D1 was hospitalised from 05-03-2008 to 08-01-2011 due to illness and there are no latches on their part in not filing the written statement within the stipulated time. Plaintiffs opposed the petition on the ground that defendants have intentionally remained absent and after receiving notice in the final decree petition in the year 2008 and after taking considerable time, approached the trial Court with a delay petition and that there are no bonafides.

9. I have perused the material papers and the impugned orders, which are under challenge. It is the specific case of petitioners that D1 was bedridden from 05-03-2008 to 08-01-2011 with some ailment and to prove the same they have produced medical certificate issued by Dr.Murahari with corresponding prescriptions. One of the contentions of the Advocate for revision petitioners is that the Court below has not properly appreciated the medical certificate and prescriptions and therefore, the findings of the Court below are incorrect. As seen from the record, though the medical certificate and prescriptions disclose that D1 was bedridden up to 08-01-2011, the applications were filed on 11-02-2011 i.e., nearly two months after recovery from ailment. Learned trial Judge, while considering this aspect, observed that the petitioners have failed to explain every day's delay at least for these two months.

The learned trial Judge has not accepted the medical certificate pointing out some discrepancies, but they may

not the very much relevant, because even if that certificate is accepted, it has to be treated that delay was explained only up to 08-01-2011 and the affidavit is silent about the delay from 08-01-2011 to 11-03-2011. Further, this medical certificate and prescriptions are in respect of D1 only. Except saying that because of illness of husband, D2 could not meet her Advocate, no other specific reasons were given for the long delay of 1026 days. For drafting written statement, if really the petitioners are interested to contest the suit, D1 can convey the instructions to his wife and who in turn can approach the Advocate and appraise instructions and get the written statement drafted and collect the signature of D1 and hand it over back to the advocate to be filed in Court. It is not their case that D1 was paralysed or was on the bed, with such a serious ailment, which prevented him even talk to his wife or any other person. As already observed above, even if the period of illness is taken as sufficient reason, there was no explanation for another two months after he was recovered from the ailment. So for all these reasons, the contention of the revision petitioners that the trial Court has not followed the principles of natural justice and that they have explained delay of 1026 days with cogent and convincing reasons cannot be accepted. As seen from the record, plaintiffs filed final decree petition in the year 2008 itself and the revision petitioners have not whispered anything in their affidavit about that application. When plaintiff specially contended that D1 & D2 receiving notices in final decree petition and

invoked provisions of Order 9 Rule 13 after taking considerable time, it was not denied by filing any additional affidavit. All these aspects would clearly disclose that the petitioners were not diligent in prosecuting their case.

10. Advocate for revision petitioners cited one ruling of Supreme Court and one ruling of this Court for the proposition that number of days is not the criteria and the criteria is sufficient cause for the delay. The proposition laid down in the above two decisions is not disputed, but that principle is not applicable to the case, because the petitioners failed to give any reason for two months period out of 1026 days, leave alone sufficient reason.

11. On a scrutiny of the material, I am of the considered view that the trial Court has rightly dismissed the applications and I do not find any illegality or irregularity or wrong exercise of judicial discretion by the trial Court, therefore, the revisions are devoid of merits and liable to be dismissed.

12. Accordingly, both the revisions are dismissed as devoid of merits. No costs.

13. As a sequel, miscellaneous petitions, if any, pending in these Civil Revision Petitions, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:12.06.2015

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