

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

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CIVIL REVISION PETITION No.3394 of 2013

Between:

Hanumanthgundam Bhavanamma and others.

....Petitioners

and

Boreddy Rama Thulasamma

....Respondent

JUDGMENT PRONOUNCED ON : 28.12.2015

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?

2. Whether the copies of judgment may be : No
Marked to Law Reporters/Journals?

3. Whether Their Ladyship/Lordship wish to : No

see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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ORDER:

The respondent filed the suit against the petitioners for specific performance of agreement of sale dated 17.09.2011 executed by petitioner Nos.1 and 2 in favour of the respondent. The case was posted for written statement on 23.04.2008 and the petitioners did not file the written statement. Hence, they were set *ex parte* and the suit was decreed on 30.04.2008. The petitioners filed I.A.No.1609 of 2009 in O.S.No.276 of 2007 seeking condonation of delay of 97 days in filing the petition to set aside the *ex parte* decree dated 30.04.2008 stating as follows:

“...As we are in search of documents I could not inform the sale to my counsel. On that day Hon’ble court called us and set *exparte*. The Hon’ble court posted the suit on 30-4-2008 and the *exparte* decree was passed against us on that day. Due to ill health I could not attend before the Hon’ble court and failed to file my written statement. Yesterday I came to know the fact that the *exparte* decree was passed against us. I have good grounds to succeed the suit. I have filed a petition seeking the set aside the *exparte* decree. There is delay of 97 days in filing the petition. So it is just and necessary to condone the delay in filing the petition to set aside the *exparte* decree dated 30-4-2008 against me. There is neither willful default nor negligent manner in my delay in filing the petition and due to ill health only.”

A counter affidavit was filed opposing the said application. The said application was dismissed by the learned Junior Civil Judge, Allagadda, on 14.06.2013 holding as follows:

“On hearing of the arguments and on perusal of the records, it shows that the petitioners/defendants filed the present petition to condone the delay of 97 days in filing the petition to set aside the *exparte* decree passed on 30-04-2008 on the ground of ill health and non availability

of the documents. The factum of ill health can be proved by placing the records before the Court. But, the Petitioners/Defendants did not choose to file any such record before the Court. On perusal of records, it shows that the petitioners/defendants engaged counsel and this court granted opportunity for filing of the written statement. In spite of opportunity the petitioners/defendants did not file written statement in time. The ground that on the date of filing of the written statement due to non availability of the documents, the written statement not filed in time. If really this is a genuine ground why the petitioners/defendants have not approached the Court or through their advocate and sought permission of the Court for extension of filing of the written statement. Even now also, the petitioners/defendants have not submitted what are the documents that they were in search and whether they secured the documents. A perusal of the affidavit shows that the petitioners/defendants aware of the proceedings in the Court. The petitioners/defendants have failed to explain the reasonable grounds for non appearance of other petitioners/defendants when allegedly 1st petitioner/1st defendant suffering with ill health. There is no explanation from the petitioners/defendants even after passing of decree why the petitioners/defendants have not filed the application within time. The delay of 97 days is in ordinary delay and unexplained. The petitioners/defendants though having knowledge about the ex parte decree has not chosen to file relevant petition in time. Further in support of their allegations they have not filed any proof.”

Challenging the same, the present Civil Revision Petition is filed.

This Court while issuing notice to the respondent on 22.08.2013 granted stay for a period of six weeks and it was extended by another eight weeks by order dated 30.04.2015. Thereafter, the stay is not in operation.

The petitioners are not interrelated and no reason was assigned in the petition seeking condonation of delay, except stating that the first petitioner could not attend the Court due to ill health. There is no reason why the other petitioners did not attend the Court. Except stating that there is a delay of 97 days in filing the petition, no explanation was given in the affidavit.

In the circumstances, the order passed by the trial Court dated 14.06.2013 in I.A.No.1609 of 2009 is correct and it does not warrant any interference.

The Civil Revision Petition is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

28.12.2015

vs

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