

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1616 of 2013

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order 07.03.2013 in I.A.No.453 of 2012 in C.F.R.No.2750 of 2012 against the judgment dt.01.06.2009 in O.S.No.141 of 2004 on the file of Junior Civil Judge, Yemmiganur.

2. The petitioner herein filed the said suit against respondents for specific performance of an agreement of sale dt.28.09.2000 executed in his favour by 2nd respondent. The 2nd respondent claimed to have obtained a Power of Attorney from the husband of 1st respondent by name Chakali Basanna and stated that he is the owner of the suit schedule land. After contest, the suit was decreed on 01.06.2009.

3. Thereafter, the 1st respondent filed an appeal before the II Additional District Judge, Kurnool, along with I.A.No.453 of 2012 to condone the delay of (1107) days in filing the appeal.

4. In the affidavit filed in support of the said application, she stated that she is an illiterate and innocent person and her counsel in the trial court Sri A. Zaheer Ahmed, Advocate, Yemmiganur, misled her and

did not inform her that the suit is decreed. She claimed that till 02.07.2012, she was not aware that the suit had been decided against her and she would have to file an appeal. She claimed that certified copy of decree and judgment of the trial court was applied for on 01.05.2010 and it was handed over on 05.05.2010 to the Advocate at Adoni, but she was not given a copy of it till 02.07.2012. She claimed that on 02.07.2012, when she was cultivating the suit land, the 2nd respondent came to her on behalf of petitioner and informed her that the suit had been decreed and she would have to vacate the suit land.

5. She also filed a complaint under Section 35 of the Advocates Act, 1961 against her Advocate by name A. Zaheer Ahmed, Advocate.

6. Counter-affidavit was filed to this application by petitioner denying the above allegations and contending that 1st respondent was throwing blame on her Advocate intentionally and without any valid reason; that petitioner had got issued a legal notice dt.01.02.2010 asking the 1st respondent to execute a registered sale deed but having received the same she did not comply with the said request; he filed E.P.No.21 of 2010 seeking execution of a sale deed in respect of the E.P. schedule property and a sale deed was also executed in his favour on 04.05.2012 after contest; 1st respondent had also given evidence,

both in chief-examination and cross-examination, in the E.P; thereafter, he filed E.A.No.139 of 2012 under Order 21 Rule 95 C.P.C. for delivery of possession of property; delivery warrant was issued, but the 1st respondent obstructed the Court Amin with her followers and so he did not execute the warrant; the trial court also ordered police aid to the Court Amin while delivering the warrant and these facts have been suppressed by 1st respondent; and that 1st respondent had filed CRP.No.4711 of 2012 and in spite of the fact that there was no stay granted therein it was wrongly informed to the Court below that a stay had been granted in the E.P. proceedings.

7. By order dt.07.03.2013, the Court below allowed I.A.No.453 of 2012 filed by 1st respondent believing the version of 1st respondent that her counsel did not inform her about the disposal of suit. It also awarded costs of Rs.11,000/- to be paid by her on or before 15.04.2013.

8. The court below observed that 1st respondent is illiterate and not worldly-wise and it was the duty of her Advocate to address a letter to her informing that he had taken certified copies and to receive them so that an appeal can be preferred. It held that since the petitioner stated that his affairs were being dealt with by 2nd respondent there appears to be some foul play and it is probable that 1st respondent was not informed about the

judgment in the suit.

9. Challenging the same, the present Revision is filed.

10. Heard Sri K. Rajanna, counsel for petitioner. None appears for respondent even though the name of Sri Sriman, Advocate is printed in the cause-list. This Advocate, Sri Sriman, had not appeared before this Court on 27.06.2013, 03.09.2015, 04.09.2015, 11.09.2015, 15.09.2015, 16.09.2015, and also to-day.

11. It is no doubt true that the power to condone delay conferred under the Court under Section 5 of the Limitation Act, 1963 has to be exercised liberally, but there must exist sufficient cause for condonation of delay. The period or length of delay is not the relevant factor, but the cause for delay is the important factor.

12. Admittedly, the 1st respondent who was 1st defendant in the suit O.S.No.141 of 2004 had contested the suit by engaging an Advocate Sri A. Zaheer Ahmed, Advocate, Yemmiganur. The suit was decreed on 01.06.2009.

13. The petitioner herein had filed a counter in the Court below specifically taking a plea that after the decree was obtained a legal notice dt.01.02.2010 (Ex.B.1) was addressed by petitioner to 1st respondent and he also

filed Ex.B.2 acknowledgment copy proving the service of said notice on 1st respondent. The Court below referred to the acknowledgment copy and held that the acknowledgment indicates only the thumb mark of 1st respondent and it was not sure whether the notice was served on 1st respondent or not. In the Court below, in her cross-examination, the 1st respondent admitted that she received the legal notice from petitioner before filing of E.P. In view of the said admission by 1st respondent, the Court below is not correct in holding that 1st respondent was not aware of judgment of the trial court and she was not informed of the said fact by her Advocate.

14. The petitioner has also stated that he filed E.P.No.21 of 2010 seeking execution of registered sale deed in respect of E.P. schedule property in his favour, that 1st respondent had examined herself in the said E.P. both in chief and had also faced cross-examination and that the E.P. was allowed and a sale deed was executed by the Court on 04.05.2012. The copies of the proceeding in the E.P. as well as the deposition of 1st respondent have been marked as Exs.B.5 and B.6 before the Court below. Unfortunately, these have not even been adverted to by the Court below.

15. I am of the opinion that the Court below was swayed by the contention of 1st respondent that she was

an illiterate and not worldly-wise woman and had clearly ignored Exs.B.1, 2, 5, 6 as well as deposition of 1st respondent. It is the duty of a party who has engaged an Advocate in a suit to keep track of proceedings in the suit, if not, by herself, by taking the help of some relative or a friend; and the party cannot simply blame her Advocate for not preferring an appeal in time.

16. I am therefore of the opinion that the order passed by the Court below cannot be sustained and that 1st respondent had not shown sufficient cause for condoning the inordinately long delay of (1107) days in filing the appeal C.F.R.No.2750 of 2012 before the II Additional District Judge, Kurnool.

17. Therefore, the Civil Revision Petition is allowed and the said order is set aside; and I.A.No.453 of 2012 in C.F.R.No.2750 of 2012 against the judgment dt.01.06.2009 in O.S.No.141 of 2004 on the file of Junior Civil Judge, Yemmiganur is dismissed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 29.09.2015

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