

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
CIVIL REVISION PETITION No.3078 of 2015

-

ORDER:

This revision is filed challenging the order dated 24.07.2015 in I.A.No.113 of 2015 in O.S.No.119 of 2010 on the file of the Senior Civil Judge at Adilabad.

2. Heard the learned counsel for both the parties and perused the material available on record.

3. The facts leading to filing of the present petition are briefly as follows:

The respondent herein filed O.S.No.119 of 2010 on the file of the Senior Civil Judge Court, Adilabad for declaration of title and recovery of possession of the plaint schedule property. For one reason or other, the respondent did not choose to file written statement. The trial Court having no other option set the defendants as ex parte for non-filing of the written statement. The trial court passed ex parte decree on 26.07.2011. The petitioners herein filed CFR No.1246 of 2012 on 11.09.2012 for setting aside the ex parte decree dated 26.07.2011. The respondent herein filed E.P.No.7 of 2013 in O.S.No.119 of 2010. On receipt of notices, the petitioner No.1 herein (JDr No.1 in E.P.) made appearance before the Executing Court opposing the execution petition. The petitioners herein filed CRP No.1222 of 2015 for non-processing of CFR No.1246 of 2012 and the same was allowed by this Court on 01.05.2015 directing the trial Court to dispose of CFR No.1246 of 2012. In pursuance of the orders of this Court, the petitioners herein filed I.A.No.113 of 2015 in O.S.No.119 of 2010 to set aside the ex parte decree dated 26.07.2011 by condoning the delay of 381 days in filing the petition and the same was dismissed by the trial Court. Feeling aggrieved by the order and decree of the trial Court, the present revision petition is preferred.

5. As rightly pointed out by the learned counsel for the respondent it is the duty of the petitioners to explain sufficient cause for non-filing of the petition for setting aside the ex parte decree within the period of limitation.

6. The fact remains that the petitioners herein have filed CFR No.1246 of 2012 for setting aside the ex parte decree. For one reason or other, the said petition was not processed for such a long time. It is not uncommon to creep this type of mistakes. While dealing this type of cases, the Court shall not lose sight of the ground realities.

7. While deciding the petitions filed under Section 5 of Limitation Act, the approach of the Court shall be pragmatic and pedantic. If the approach of the Court is pedantic, while disposing of this type of petitions, sometimes it may lead to miscarriage of justice. For fault of somebody else, the litigant public shall not be penalized. The present suit O.S.No.119 of 2010 is filed for declaration of title and recovery of possession of the plaint schedule property. The *lis* involved in the suit relates to the immovable property. If the petition is dismissed, it may not be possible for the petitioners to ventilate their grievances. Even if the petition is allowed, that may not cause prejudice to the respondent. Taking into consideration the nature and scope of the suit, I am of the considered view that it is a fit case to condone the delay of 381 days in filing the petition in order to secure the ends of justice. For laches on the part of the petitioners, the respondent was forced to contest the matter twice in this Court by spending some amount.

8. In the result, the Civil Revision Petition is allowed and the petitioners are hereby directed to deposit an amount of Rs.3,000/- (Rupees three thousand only) to the credit of O.S.No.119 of 2010 on or before 15-09-2015. On such deposit, the plaintiff is entitled to withdraw the same.

9. As the matter is of the year 2010, the trial Court is hereby directed to dispose of the O.S.No.119 of 2010, as early, as possible, preferably, within a period of six (06) months from the date of receipt of the order. No costs.

Miscellaneous petitions, if any pending, in this revision shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 26.08.2015.

Gvl