

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CIVIL REVISION PETITION No. 1877 OF 2015

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ORDER:

The petitioner herein is the first defendant in suit O.S.No.461 of 2005 instituted by the respondents 1 to 6 herein. Suit O.S.No. 461 of 2005 has been instituted for specific performance of agreement of sale dated 17.03.2003 in respect of plaint schedule land comprising of Ac.18.00 in an extent of Ac.25.00 lying in Sy.No.533 & 534 of Maisammaguda Hamlet of Gundlapochampally Village, Medchal Mandal, Ranga Reddy District. It appears, that suit has been posted for trial on 23.09.2011. However, on 23.09.2011 a section of the advocates supporting the agitation for formation of separate Telangana State having given a call to the advocates for abstaining from attending to the Courts, have also taken to certain measures for preventing advocates and the litigants from gaining entry to the District Court Complex, Ranga Reddy District. As a result of that, it is alleged that the counsel for the plaintiffs and the plaintiffs could not gain entry to the Court complex and viewing the absence of the plaintiffs and also absence of any representation on their behalf, the Court seemed to have dismissed the suit for default on 23.09.2011.

Sri Md. Hafeezuddin, learned Advocate who has assisted the learned Senior Counsel in the matter has sworn to an affidavit filed in support of I.A.No.16 of 2013. In the course of that affidavit, in particular, in paragraph 5 it is asserted that immediately a petition was filed for restoring the suit, within time vide SR.No.1768 of 2011 dated 10.10.2011, but however, it was stated that the office of the Court has misplaced the said interlocutory application. Hence, two separate applications have been moved, one asking for condonation of delay of 438 days in filing the restoration application and another for restoring the civil suit by setting aside the order of dismissal for default. It is this I.A.No.16 of 2013, which is moved under Section 5 of the Limitation Act read with Section 151 C.P.C seeking condonation of delay which is ordered by the Court now. Against this order of condonation of delay dated 14.07.2014, the present revision petition is preferred by the first defendant in the suit.

It is contended by Sri P. Srinivas that, when the suit was dismissed as long back as

on 23.09.2011, if the plaintiffs are sincere and keen to pursue a suit, they would not have taken so much of time to file an application for restoration. Therefore, there are no bonafidees in seeking condonation of such a huge delay. Hence, the Court has committed a grave error in condoning the delay and then restoring the suit.

I have perused the order passed by the learned IV Additional District Judge, Ranga Reddy. The learned Judge has pointed out that an application appears to have been filed on 10.10.2011 itself vide SR.No.1768 of 2011. Though the petitioner herein filed a counter to the interlocutory application, he has not raised any objection with regard to SR.No.1768 of 2011. Perhaps, if the petitioner herein has verified the suit register, it would have been known to him as to whether the assertion made that the application for restoration of the suit was moved on 10.10.2011 is correct or not. Since the petitioner has not made any such attempt, in the face of an assertion made to that effect by the learned counsel assisting the learned Senior Counsel for the plaintiffs, the Court below is justified in relying upon such an assertion. Since no action of a Court can cause prejudice to a party, the Court below felt that misplacing of the interlocutory application by the Court staff in view of prevailing circumstances, rendered the Court to condone the delay. Condonation of delay, in my view is only to sub-serve the interests of justice. The plaintiffs, as set out by them in the plaint itself, the plaintiffs who have averred in the plaint that they have paid substantial amount running to few lakhs of rupees to the petitioners herein, as part of the sale consideration and the petitioner herein has also accepted the same, perhaps is justified in condoning the delay. I, therefore, do not see any infirmity either legal or otherwise in exercising the jurisdiction vested in the Court in condoning the delay, for me to exercise revisional jurisdiction. Hence, this civil revision petition is dismissed at the admission stage. No costs.

In view of the fact that the suit is of the year 2005, I am sure the Court will endeavour to dispose if of, as expeditiously as possible, at any rate before the end of August, 2015.

JUSTICE NOOTY RAMAMOHANA RAO

10.06.2015

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