

THE HON'BLE SRI JUSTICE A.V. SESA SAI

-
CIVIL REVISION PETITION No.2660 OF 2011
-

ORDER:

This Revision filed under Section 115 of the Code of Civil Procedure challenges the order dated 05.07.2011 passed by the Principal Junior Civil Judge, Yelamanchili, Visakhapatnam District.

2. Heard Sri E.V.V.S.Ravi Kumar, learned counsel, appearing for the petitioner. Despite service of notice, none appears for the respondent.

3. The respondent herein filed ATC No.5 of 2008, praying for eviction of the petitioner from the scheduled land. The learned Principal Junior Civil Judge, Yelamanchili, passed an *ex-parte decree* on 11.11.2008, ordering eviction of the petitioner. The petitioner herein filed an application, seeking to set aside the said *ex-parte decree* and along with the said application, petitioner herein filed I.A.No.366 of 2009 under the provisions of Section 5 of the Limitation Act, praying for condonation of delay of 162 days in filing the said application. Resisting the said application, respondent herein filed a counter. Learned Principal Junior Civil Judge, by way of order dated 05.07.2011, dismissed the said application.

4. Calling in question the validity and legal sustainability of the said order passed by the learned Principal Junior Civil Judge, present revision came to be filed.

5. This Court, while ordering notice, initially granted interim stay of all further proceedings in E.P.No.44 of 2009 in A.T.C.No.5 of 2008 and thereafter, while admitting the Revision, this Court extended the interim order until further orders vide CRP.MP.No.3787 of 2011.

6. It is contended by the learned counsel for petitioner that the questioned order is erroneous, contrary to law and opposed to very spirit and object of the provisions of A.P. Andhra Area Tenancy Act, 1956. It is further contended that the Court below did not consider the

averments made in the affidavit filed in support of the application from proper perspective and had the same been considered properly, the order impugned would not have emanated. It is further submitted by the learned counsel that the reasons assigned by the Court below are neither cogent nor convincing nor valid.

7. The information available before this Court manifestly discloses that the petitioner herein was set *ex-parte* in the main A.T.C. No.5 of 2008 on 11.11.2008 and subsequently, the Court below on 18.11.2008, passed the *ex-parte* decree, ordering eviction of the petitioner from the scheduled land.

8. The petitioner herein at paragraph Nos.3 to 5 assigned the following reasons in the affidavit filed in support of the application:

“3. I submit that I was not filed my counters in the alleged petitions respectively within the time and as such I was called exparty in the petitions by this

Honorable court on 18.11.2008. I submit that the counters filed by me in the above petitions may be read as a part of this affidavit. I submit that I am

not in a position to secure the required documents etc. which my counsel asked in the circumstances of the petition scope and the volume of litigation, insofar as concerned to my knowledge and information regarding the documents available to the petition schedule property

.

4. I submit that there was the difficulty to secure my records from different sources. I submit that there was the delay is partly because I was asked my

counsel to furnish him all the records and secondly the delay was caused for my innocence about the consequences of the petition. I submit that I am the single man in my family, I am engaging with my daughter's marriage on the 5th day of April, 2009.

I submit that prior to the marriage I was held up with the family affairs due to the traditional importance etc., are the reasons I was ignored about the urgency and the availability before my counsel, along with the required documents etc. I submit that due to the delay was caused by me partly, and secondly the delay was caused due to

pressure of work in the office of my counsel.

5. I submit that I am supported with all genuine documents and I am in position and enjoyment exercising rights openly to the knowledge of everybody particularly the vendors society till the death of my father and thereafter I am in the position and enjoyment as such I was incorporated in the ROR records etc, in place of my deceased father.”

9. Opposing the same, the respondent herein filed counter, *inter-alia* stating that the petitioner personally attended with his counsel on 17.07.2008 in A.T.C. No.5 of 2008 and had taken a plenty of time to file the counter till 11.11.2008 and failed to file the counter intentionally to drag on the matter, which lead to passing of the *ex-parte* decree against the petitioner. The respondent herein further stated in the counter that he filed execution petition and pursuant to the orders passed by the Court, property was also delivered in the presence of Village President and others and the petitioner never objected the said delivery. The said counter further averred that the marriage of the petitioner's daughter took place in the month of April, 2009 and nothing prevented him from filing his counter in A.T.C. No.5 of 2008, till 11th November, 2008 and the petitioner filed the present revision petition at the time of delivery of the possession.

10. A perusal of the order impugned in the present revision clearly shows that the learned Principal Junior Civil Judge discussed about the delay aspect and came to a categorical conclusion that the petitioner failed to assign proper reasons and that there are no *bona fides* in the petition.

11. It is a settled and established proposition of law as laid down by the Hon'ble Apex Court that unless the orders impugned suffer from patent perversity, the invocation of the jurisdiction of this Court by way of Revision is impermissible. The material available on record clearly discloses that the petitioner herein could not lay any proper foundation in support of his stand. As the Court below recorded valid reasons, this

Court does not find any reason to meddle with the impugned order.

12. For the aforesaid reasons, Revision Petition is dismissed. No order as to costs. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence.

A.V.SESHA SAI, J

01.02.2016

SS