

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.663 of 2016

-

ORDER:

This revision is preferred questioning order dated 05.12.2015 in E.A. No.193 of 2015 in E.A.No.91 of 2012 in E.P.No.104 of 2011 in O.S.No.355 of 2007 on the file of Principal Senior Civil Judge Tenali.

2. Revision petitioner herein filed above referred E.A No.193 of 2015 to condone delay of 375 days in filing petition to bring legal representatives of claim petitioner i.e., his father late Gurram Panakalarao, who died on 20.12.2013 and that petition was opposed by decree holder, and the Court below on a consideration of affidavit filed in support of the petition, and the counter-affidavit filed on behalf of D.Hr, dismissed the petition holding the contention of revision petitioner that he is not aware of the Court proceedings cannot be accepted and so also his contention that his father's advocate did not inform him about the pendency of the claim petition proceedings also cannot be believed. Assailing these two findings of the trial Court, present revision is preferred.

3. Heard arguments.

4. Advocate for revision petitioner submitted that Court below completely erred in not giving opportunity to revision petitioner, who is none other than the son of claim petitioner to continue the proceedings being L.R of the deceased/claim petitioner. He submitted that learned Senior Civil Judge ought to

have seen that petitioner has got very good case on merits and that petitioner's mother did not inform him about pendency of the proceedings and drawing a presumption of knowledge by the Court below is not legal. He submitted that liberal approach ought to have been taken by the Court below in considering delay condonation petition and the order of Court below is liable to be set aside.

5. In support of his argument, advocate for petitioner placed reliance on judgments of Supreme Court in ***Bhag Singh and others v Major Daljit Singh and others***^[1], ***Sharafat Hussain (dead) through L.Rs. and others v. Mohd. Shafiq and others***^[2] and ***Harjeet Singh v. Raj Kishore and others***^[3].

6. In reply, advocate for respondent/D.Hr submitted that in the affidavit filed in support of petition to condone delay of 375 days, petitioner himself stated that his father's advocate informed him about the Court proceedings on 10.06.2014 and asked him to take death certificate of his father from the concerned authorities, but the petition was filed on 31.03.2015, and there is absolutely no explanation for the delay from 10.06.2014 to 31.03.2015, and the Court below rightly dismissed the petition. He further submitted even if the delay is condoned and petitioner is permitted to come on record as L.R. of the deceased/claim petitioner, there are no merits in the claim petition itself because claim petition is not maintainable in a mortgage decree, as held by this Court in ***Indian Bank Nidadavole, rep. by its Zonal Manager v. Nallam Veera Swamy and others***^[4]. He further submitted that there is no error or material irregularity to be interfered by this Court by exercising revisional powers.

7. Now the point that would arise for my consideration is:

Whether the order of Court below is legal, proper and correct?

POINT:

8. E.A No.91 of 2012 claim petition is filed by father of revision petitioner. Admittedly, the claim petitioner died on 20.12.2013. In para-3 of the affidavit filed in support of the petition to condone delay of 375 days, revision petitioner stated on oath as follows:

“My father’s advocate informed the court proceedings on 10.06.2014 and informed to take Death certificate of my father from the concerned authorities and to file the same into Court. On 13.06.2014 I obtained the death certificate of my father from Panchayat Secretary, Tippalakatta Village. But unfortunately the said Certificate was misplaced in my house and subsequently it was traced and I filed the same into Court along with a memo on 10.11.2014”

9. From the above statement, it is clear that petitioner has knowledge that L.R. petition has to be filed in the claim petition, which information he got from his father’s advocate on 10.06.2014 and he obtained the death certificate on 13.06.2014, and it was filed into the Court along with a memo on 10.11.2014 but admittedly, this petition is filed on 31.03.2015.

10. As rightly pointed out by advocate for respondent/ D.Hr, at least from 10.06.2014 till 31.03.2015, petitioner must explain the reasons with cogent and convincing material. But the affidavit is silent as to the delay for this period.

11. On the other hand, advocate for petitioner contended that he could not file petition in time as his mother was admitted in the hospital and as there were none to attend on her welfare and he has to personally look after her. No material is placed to

substantiate the version that his mother was admitted in the hospital and that he attended on her while she was in the hospital. No particulars are given in the affidavit, as to when her mother was admitted in the hospital and when she was discharged while delay was 375 days. Unless it is shown that his mother was in the hospital for the 375 days or at least for 360 days, affidavit of petitioner with regard to delay of 375 days cannot be accepted and the trial Court rightly dismissed the petition holding that the reasons stated by petitioner for the delay of 375 days cannot be accepted. Further as seen from the record, claim petition is filed in a mortgage suit based on registered mortgage and claim petition is filed in the E.P filed for execution of such mortgage decree.

12. In ***Indian Bank, Nidadavole*** case, this Court observed that *“the legal principle enunciated in clear terms in this regard makes the position abundantly clear that no claim petition under Section 47 or under Order XXI Rule 58 CPC would lie and be maintainable in an execution taken out in a suit raised on a mortgage.”*

13. In view of the above, opinion of this Court even if the petitioner is permitted to come on record, the claim petition cannot be maintained. So even on merits also, there is no case for revision petitioner.

14. With regard to decisions relied on by revision petitioner in all those cases, sufficient reasons were given for the delay and Hon'ble Supreme Court while exercising powers under Article 136 in one case dispensed with minor technical procedural aspects for doing substantial justice. But here, the petitioner having knowledge of the fact that L.R petition has to be filed as per the information furnished by his advocate on 10.06.2014, he did not

file the same till 31.03.2015 and the explanation offered by him for this delay is not at all convincing. Therefore, those decisions have no application to the case on hand.

15. On a scrutiny of the material, I am of the view that Court below has not committed any jurisdictional error or material irregularity in dismissing the petition of revision petitioner. As such, there are no grounds to interfere with the order of trial Court.

16. Accordingly, this Civil Revision Petition is dismissed. No costs. Miscellaneous Petitions, if any pending, in this Revision, shall stand closed.

S. RAVI KUMAR, J

Date: 21-04-2016.
gvl

-
- [\[1\]](#) 1987 (Supp) Supreme Court Cases 685
[\[2\]](#) (1996) 10 Supreme Court Cases 253
[\[3\]](#) (1984) 3 Supreme Court Cases 573
[\[4\]](#) 2014 (5) ALT 631