

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL REVISION PETITION No.5179 OF 2007

Dated 18-3-2016

Between:

Afzal Ali Khan.

..Petitioner.

And:

Kunisetty Rama Mohan Rao and others.

..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL REVISION PETITION No.5179 OF 2007

ORDER:

This revision is preferred questioning the order dated 27-8-2007 in I.A.No.1621 of 2005 in O.S.No.12 of 2004 on the file of I Additional District Judge, Kadapa.

Revision petitioner filed above referred I.A. under Limitation Act to condone delay of 250 days in filing petition to set aside the order dated 17-11-2004 in I.A.No.717 of 2004 in O.S.No.12 of 2004. Trial court on a consideration of affidavit of revision petitioner herein and the counter filed on behalf of respondents 2 to 4 held that the revision petitioner failed to show sufficient reason for the delay of 250 days and that the explanation given in the affidavit cannot be accepted and dismissed the application and consequently, application filed under Order 9 Rule 13 C.P.C. was also dismissed. Aggrieved by the said order, present revision is preferred.

Heard arguments.

Advocate for revision petitioner submitted that revision petitioner herein raised objection with regard to marking of a document when the suit was before Senior Civil Judge, Kadapa and this objection was upheld by

Senior Civil Judge, Kadapa but subsequently, the suit was transferred to I Additional District Judge, Kadapa and renumbered as O.S.No.12 of 2004 and that court reconsidered the admissibility of the document and held that no stamp duty is required on that document and challenging that, petitioner herein filed C.R.P. No.4086 of 2004 and that this court passed an order on 21-9-2004 allowing the revision by setting aside the order passed in I.A.No.717 of 2004 but in the meantime, the court has disposed of the main I.A. and that the petitioner thought that the court would automatically restore I.A. in view of the orders of the revision but it has not done, petitioner was advised to file application to set aside exparte order and as there was delay, he also filed delay application and the court without considering the affidavit of the revision petitioner dismissed the application.

Learned advocate for respondents submitted that no stay is granted by this court in C.R.P. No.4086 of 2004 and as there was no stay, trial court has disposed of the application and as the petitioner failed to explain the delay of 250 days, court below rightly dismissed the application.

Now the point that would arise for my consideration in this revision is whether the order of the court below is legal, correct and proper?

POINT:

` The main contention of revision petitioner is that he has explained delay of 250 days in his affidavit but the court has not considered the delay.

As seen from the affidavit filed in support of the petition, revision petitioner has narrated the entire facts including various proceedings initiated both in the trial court and this court and the delay aspect is referred only in paras 10, 13 and 14 of his affidavit and they are as follows:

“So I have filed a petition I.A.No. /2005. Under Section 94(E) and Section 151 C.P.C. to set aside the exparte order dated 17-11-2004 in I.A.717/2004. As

the present petition to set aside the said order is filed beyond 30 days and as there is a delay of 250 days this petition is filed praying this Hon'ble Court to condone the delay."

"I submit that the order passed itself was subject to the final order in the Revision and in view of the orders passed in the Revision Petition by the Hon'ble High Court, the orders of this Hon'ble Court have to be set aside. I submit that I was under a bonafide impression that the orders would automatically be set aside, but I am advised to file a separate application. In the process, there is a delay of 250 days in filing the application to set aside the order."

"The delay in filing the application is neither willful nor wanton, but due to the reasons stated above. Hence, it is, prayed that the Hon'ble Court may be pleased to condone the delay of 250 days in filing the present application."

A plain reading of the above paragraphs, it is clear that except stating that in the process, the delay is caused, the petitioner is silent as to when he was advised by counsel to file application to set aside the exparte order and as to why he kept quite for long 250 days without availing remedy of filing application to set aside exparte order. Learned trial judge has rightly discussed and considered each and every point raised on behalf of both parties and recorded that the explanation given for the delay in filing the petition under Order 9 to set aside the exparte order cannot be accepted as the petitioner failed to show sufficient cause for the delay of 250 days. I do not find any error in the order of trial court. As the affidavit of the revision petitioner is vague and failed to explain delay of 250 days with cogent and convincing reasons, I am of the view that learned trial judge has rightly not accepted the affidavit of the revision petitioner, and there is no illegality in the order of court below.

On a scrutiny of material, I am of the view that there is neither jurisdictional error nor material irregularity in appreciating the material on record and that there are no grounds to interfere with the impugned order dated 27-8-

2007.

For these reasons, this Civil Revision Petition is dismissed. No costs.

As a sequel to the disposal of this revision, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

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JUSTICE S.RAVI
KUMAR

Dated 18-3-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs