

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No. 5282 of 2012

Order:

The petitioner herein is the plaintiff in OS No.3 of 2006 on the file of the Junior Civil Judge, Prathipadu. The said suit was filed against the respondent herein and another on 23.01.2006 for specific performance of the agreement of sale dated 04.01.2001 relating to Ac.0.46 ½ cents of zeroyathi land in Survey No.50/1A of Annavaram village, Sankavaram Mandal, East Godavari District. After filing of the written statement by the defendants, the suit was coming up for trial in the year 2008. Since the plaintiff did not choose to lead evidence, the suit was dismissed for default on 06.02.2009. After dismissal of the suit, the petitioner, who is the plaintiff in OS No.3 of 2006, filed IA No.264 of 2010 seeking condonation of delay of 453 days in filing the petition for restoration of the suit. The reasons given by the petitioner in support of the application read as follows.

“I submit that, the above matter was coming on for trial and was posted on Dt.14.10.2008, to adduce my evidence. On that day I could not be present before the Hon'ble Court to adduce my evidence as I was held up in different places like Arunachal Pradesh, Nallamala Forest, Rameswaram and other places along with my husband as he was engaged in a cinema shooting by name “RAMUDU MANCHI BALUDU”. My husband by name Venkata Rangarao is the hero-cum-producer to the above said movie under the name and style of Upendra Movies. Due to my absence on 14.10.2008 since I did not adduce my side evidence the Hon'ble Court is pleased to dismiss the suit. The said movie shooting was completed by the end of January 2010. When I returned to Kakinada, I approached my counsel Sri V.V. Kesava Ramanarao, he informed me on 06.02.2009 about the dismissal of the suit. There are no willful laches on my part in not attending and adducing my side evidence before the Hon'ble Court on 14.10.2008. I have got fair and good chances to win the suit.”

2. The said application was resisted by the respondent/second defendant stating that the reason given by the petitioner was not

correct and she was living in Kakinada. He further stated that the petition seeking condonation of delay was filed without impleading all the defendants, but showing him only.

3. In support of the application, the petitioner adduced evidence by examining herself as PW.1 and her husband namely Bandaru Venkata Rangarao as PW.2 and marked Exs.P1 to P6. The respondent/second defendant was examined as RW.1 and no documents were marked on his behalf.

4. The trial Court, on consideration of the entire material on record, dismissed the application with the following observations.

“From the evidence of above witnesses, it is clear that except filing of Exs.P1 to P6, which are in the nature of communication by the Prasad Laboratory to the banner of the petitioner with regard to processing and printing of their film including the charges and registration of the film with the Telugu Film Producers Council, they have not filed any document showing that they were held up various places with regard to shooting of the said film. Therefore, the documents under Exs.P1 to P6 do not help the case of the petitioner to explain the delay in not filing the petition for restoration of the suit, as already pointed out by the learned counsel for the respondent. Further, even if the case of the petitioner is accepted for a moment that they came to know about the dismissal of the suit on 06.02.2009, but this petition has been filed on 11.02.2010 i.e., nearly after one year of their knowledge. But there is no material produced as to why they have waited for one year for filing this petition, even though they have got knowledge about the dismissal of the suit.

.....

On considering the evidence of PWs.1 and 2 and bearing in mind the proposition of law laid down in the above decisions, it is clear that the petitioner has failed to show sufficient cause for condoning the abnormal delay of 453 days and even they are not diligent enough in prosecuting the suit. Further, the petitioner is not diligent enough in prosecuting the matter, even after having knowledge about the dismissal of the suit on 6.2.2009. It is also well settled that the law will only help the diligent people, but not the sleepy. Hence, I consider that it is not a fit case, in which, indulgence can be shown in favour of the petitioner in condoning the abnormal delay of 453

days in filing the petition for restoration of the suit.
Accordingly, the petition is liable to be dismissed.”

5. Challenging the same, the present Civil Revision Petition is filed.

6. When this CRP came up for consideration, this Court asked for filing the copies of depositions of the parties, and a perusal of the evidence of PW.1 discloses that in the cross-examination she stated that she has not filed any documentary proof in support of the application seeking condonation of delay, but she has been contacting her Senior Advocate with regard to suit proceedings every week. In the chief-examination she stated that she was informed by her advocate about the dismissal of the suit on 06.02.2009. When these two statements are read together, it means that she came to know about the dismissal of the suit immediately after 06.02.2009, but she states in her chief examination that in the last week of January 2010 she came to Kakinada along with her husband from Cinema shooting and about two days back only she came to know about the dismissal of the suit. This statement of the petitioner does not appear to be correct. In the circumstances, the order passed by the lower Court on 03.09.2012 does not warrant any interference.

7. Accordingly, the Civil Revision Petition is dismissed. However, in the circumstances, no costs.

8. As a sequel thereto, the miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.
Date: 11.02.2016
Nsr

RAMALINGESWARA RAO, J.