

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOS.4616 AND 5558 OF 2016

COMMON ORDER

O.S.No.161 of 2010 was filed by the respondent in these two civil revision petitions seeking eviction of the petitioner herein from the suit schedule property. Prior thereto, the petitioner herein, being the tenant in possession of the suit schedule property, filed O.S.No.273 of 2009 against the former landlords and another tenant, defendant 3 therein, for a perpetual injunction restraining them from forcibly evicting him. Significantly, the respondent herein, being the mother of defendant 3 in O.S.No.273 of 2009, purchased the suit schedule property from the former landlords. Thereafter, the petitioner also filed O.S.No.130 of 2011 against the respondent herein and her son, defendant 3 in O.S.No.273 of 2009, seeking a perpetual injunction restraining them from forcibly evicting him from the suit schedule property till disposal of O.S.No.273 of 2009. The suits were clubbed at the behest of the respondent herein and were taken up for joint trial and adjudication by the learned Principal Junior Civil Judge, Medchal. The suit schedule property comprises a shop on the ground floor and residential premises, in three small rooms, on the first floor of the building bearing House No.32-43, situated at Main Market, Shapur Nagar, IDA, Jeedimetla.

By common judgment dated 06.05.2016, the trial Court decreed O.S.No.161 of 2010 and dismissed O.S.Nos.273 of 2009 and 130 of 2011. Aggrieved by the decretal of O.S.No.161 of 2010, the petitioner tenant preferred an appeal before the learned Principal District Judge, Ranga Reddy District at L.B.Nagar, but with a delay of 81 days. I.A.No.1814 of 2016 in ASSR No.12869 of 2016 was filed by

him seeking condonation of the said delay. By order dated 14.09.2016, the learned Principal District Judge, Ranga Reddy District at L.B.Nagar, dismissed the I.A. holding that none of the reasons assigned by the petitioner for seeking condonation of the delay were convincing. Aggrieved thereby, the petitioner preferred C.R.P.No.4616 of 2016 before this Court under Section 115 CPC.

Even before the institution of this CRP, it appears that the respondent landlady instituted execution proceedings in E.P.No.9 of 2016 in O.S.No.161 of 2010, under Order 21 Rule 36 CPC, before the learned Principal Junior Civil Judge, Medchal, Ranga Reddy District. Pursuant to the delivery warrant dated 21.10.2016 issued by the Executing Court, the Court Bailiff delivered possession of the ground floor shop on 24.10.2016 to the respondent landlady but did not deliver possession of the first floor residential premises as the same were locked. The respondent landlady thereupon filed applications before the Executing Court to break open the lock under police protection and deliver possession of the residential premises on the first floor. The Executing Court ordered these applications on 07.11.2016. Aggrieved thereby, C.R.P.No.5558 of 2016 was filed by the petitioner tenant, by way of a lunch motion on 09.11.2016, and by an interim order of the same date, this Court took note of the submission that the delivery warrant had been executed only in part, to the extent of the shop, but the residential portion was yet to be delivered and directed *status quo* as regards execution of the delivery warrant dated 21.10.2016, to the extent it had not yet been executed.

Heard Sri K.V.Raghuveer, learned counsel for the petitioner tenant, and Sri Pushadapu Subba Rao, learned counsel for the respondent landlady.

As the fate of the execution proceedings initiated by the respondent landlady would hinge upon the success or otherwise of the petitioner tenant in C.R.P.No.4616 of 2016, the same is taken up for consideration first.

The common judgment in O.S.No.161 of 2010 and batch was pronounced by the trial Court on 06.05.2016. I.A.No.1814 of 2016 in ASSR No.12869 of 2016 was filed by the petitioner tenant seeking condonation of the delay in presenting the appeal thereagainst. In the affidavit filed in support thereof, the petitioner tenant stated that S.Ravinder Reddy, his counsel, had not informed him about the pronouncement of the judgment and after summer vacation, when he tried to contact his counsel, he was informed that advocates were on strike; that he could not find out about the matter and that he thereafter informed him about the case particulars. Having waited for sufficient time, the petitioner tenant stated that he himself approached the Section authorities and came to know that the judgment was passed on 06.05.2016 and filed an application on 15.07.2016 for a certified copy of the judgment and decree. He further stated that upon knowing of the decree of eviction and dismissal of the suits filed by him, he informed his parents at Gulbarga in a relative's marriage and they returned to Hyderabad, whereupon he contacted the present counsel to prefer the appeal. He therefore stated that non-filing of the appeal within time was purely due to the reasons stated by him and that it was neither intentional nor deliberate. He accordingly prayed for condonation of the delay of 81 days in filing the appeal.

The respondent landlady contested the I.A. by filing a counter. Therein, she stated that the reasons for the delay assigned by the

petitioner tenant were neither sufficient nor bonafide. She further alleged that the petitioner tenant had failed to explain day to day delay and demonstrate sufficient cause therefor. She stated that the petitioner tenant had failed to pay monthly rents even after delivery of the judgment by the trial Court and had, therefore, not approached the appellate Court with clean hands. She accordingly prayed for dismissal of the condone delay petition.

Perusal of the order under revision in this CRP reflects that the appellate Court was misled by the haphazard pleadings of the petitioner tenant in the affidavit filed in support of the I.A. The appellate Court was of the opinion that on the one hand, the petitioner tenant claimed that he had no knowledge of the passing of the judgment by the trial Court in the batch of suits on 06.05.2016 till he made enquiries with the Section authorities but on the other, he stated that he was informed about the decree of eviction and dismissal of his suits by his parents at Gulbarga where he was residing when they came to attend a relative's marriage. This perceived variation in the stand of the petitioner tenant by the appellate Court is not really borne out by the affidavit averment which reads as under:

‘3. It is respectfully submitted by knowing the decree of eviction and dismissal of our cases I was informed me to my parents at Gulbarga in a relative marriage and they turned to Hyderabad and I contacted present counsel to prepare the appeal.’

The aforesaid sentence is more amenable to the interpretation that upon knowing of the decree of eviction and dismissal of the suits, the petitioner tenant informed his parents at Gulbarga in a relative's marriage and they returned to Hyderabad,

whereupon he contacted the present counsel to prepare the appeal. The understanding of the appellate Court to the contrary therefore cannot be accepted. However, that being said, it would be necessary to examine whether the petitioner tenant satisfactorily explained the delay on his part independently.

Though Sri K.V.Raghuveer, learned counsel, would stress time and again upon the fact that the delay in the presentation of the appeal was not substantial, this Court is of the opinion that there can be no general or straitjacket principle as to what would amount to fatal delay in a particular case. Delay of a few days may be crucial in certain circumstances while delay running into years may have no serious impact in another case. Each case would therefore have to be evaluated on its own facts and circumstances.

It is significant to note that not only was the petitioner tenant facing an eviction suit in O.S.No.161 of 2010 but had himself filed two injunction suits in O.S.Nos.273 of 2010 and 130 of 2011. It was therefore for him to conscientiously safeguard his rights by monitoring the litigation with diligence. There is no explanation forthcoming as to why the petitioner tenant did not enquire with his counsel as to the status of the cases from time to time. Perusal of the common judgment dated 06.05.2016 passed by the trial Court in the suits reflects that one L.N.Bhadriraju, Advocate, was the counsel for the petitioner tenant. According to the petitioner tenant, after the return of his parents from Gulbarga, he contacted another counsel to prefer the appeal. The order under revision in this civil revision petition reflects that one P.Chandra Shekar, Advocate, was the counsel who appeared for the petitioner tenant in the condone delay petition. However, the present C.R.P.No.4616 of 2016 was initially

filed by none other than L.N.Bhadriraju, Advocate. If the petitioner tenant found this Advocate to have committed a professional lapse in not keeping him informed of the status of the cases, no reason is offered as to why he again utilized his services for the purpose of filing this civil revision petition. This is sufficient to reject the excuse put forth by the petitioner tenant that owing to the lapse on the part of L.N.Bhadriraju, Advocate, the delay ensued.

It is also to be borne in mind that E.P.No.9 of 2016 was filed by the respondent landlady seeking execution of the decree in O.S.No.161 of 2010 on the file of the learned Principal Junior Civil Judge, Medchal, Ranga Reddy District, on 13.07.2016. Details are not forthcoming as to when notice was issued and delivered to the petitioner tenant in these execution proceedings. However, the docket order dated 09.09.2016 passed by the Executing Court in E.P.No.9 of 2016 reflects that though the petitioner tenant was absent on the said day, his mother was present and no counter had been filed opposing the execution petition. Taking note of the fact that the petitioner tenant's mother did not report that any stay had been passed or an appeal had been filed, the Executing Court ordered for issuance of the delivery warrant on deposit of process. It is not in dispute that pursuant to the delivery warrant issued by the Executing Court, the shop in the ground floor of the leased premises has already been delivered to the respondent landlady.

It appears that the residential premises on the first floor of the leased premises were locked and that was the reason why the same could not be delivered by the Court Bailiff at that time. By virtue of the stay order granted by this Court in C.R.P.No.5558 of 2016, the same situation continues as on date. The finding of the trial Court

was that the petitioner tenant and his family members were not residing in these three residential rooms on the first floor of the leased premises at present.

Given the aforestated facts, the inference is inevitable that the petitioner tenant was not diligent in pursuing the litigation having slept over the matter, be it for whatever reason. So much so, he did not even contest the execution proceedings and allowed the decree to be executed in part and now seeks to stop the clock to allow him to test the judgment and decree passed by the trial Court before the appellate Court.

Sri K.V.Raghuveer, learned counsel, would place reliance on case law to support his contention that this Court should be liberal in its approach and condone the delay. In **COLLECTOR, LAND ACQUISITION, ANANTNAG V/s. MST. KATIJI**¹, the Supreme Court observed that refusing to condone the delay can result in a meritorious matter being thrown out at the threshold and a pedantic approach should not be adopted to the effect that every day's delay must be explained. This principle was reiterated by this Court in **GORRENKALA RAMESH V/s. GORRENKALA ANJAIAH**². However, it is equally well settled that a party who sleeps over his rights and allows the opposite party to gain rights thereby cannot thereafter seek to undo his lapse to the detriment of the opposite party. Lack of diligence on the part of the petitioner tenant at all stages resulted in part-execution of the decree and as matters stand, the petitioner tenant is burdened with the finding of the trial Court that the residential premises on the first floor of the leased premises were not even being used by him and his family members.

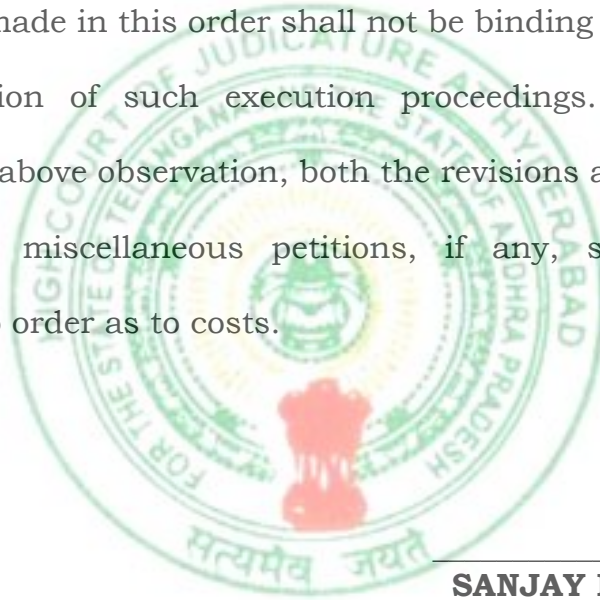
¹ AIR 1987 SC 1353

² 2015 LAWSUIT(Hyd) 1038

Given the totality of these circumstances, this Court finds no reason to interfere with the order passed by the appellate Court refusing to condone the delay. In consequence, C.R.P.No.4616 of 2016 is dismissed.

In the light of the order passed in C.R.P.No.4616 of 2016, no ground is made out for this Court to interfere in the execution proceedings at this stage. Therefore, C.R.P.No.5558 of 2016 is also dismissed. Interim order dated 09.11.2016 passed therein shall stand vacated. It is left open to the petitioner to contest the execution proceedings on merits and in accordance with law. Any observations made in this order shall not be binding or of influence in the adjudication of such execution proceedings. In summation, subject to the above observation, both the revisions are dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



SANJAY KUMAR, J

26th DECEMBER, 2016

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