

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

-
CIVIL REVISION PETITION No.3080 OF 2015

ORDER:

Heard the learned counsel for petitioners and the learned counsel for the first respondent.

2. The petitioners herein are defendants 1 and 2 in O.S.No.452 of 2011 on the file of the Court of the III Additional Chief Judge, City Civil Court, Hyderabad (for short, trial Court). The first respondent herein filed the said suit against the petitioners and the second respondent herein for recovery of an amount of Rs.51,28,750/-. The petitioners filed written statement on 22.02.2012 and P.W.1 was examined on 12.03.2012. The petitioners did not cross examine P.W.1 in spite of several opportunities. Thereafter, the right of cross-examining P.W.1 was forfeited and the suit was posted for defendants' evidence. Since the defendants were absent, their evidence was closed on 29.04.2013. Thereafter, the suit was posted to 04.06.2013 for arguments. Ultimately, an *ex parte* decree was passed on 17.06.2013.

3. It appears from the record that the petitioners filed an application for reopening the case on 05.06.2013, but did not prosecute the said application. They also filed another application to set aside the *ex parte* decree and did not pursue the same. After filing E.P.No.137 of 2014 by the plaintiff/first respondent herein, the petitioners herein filed I.A.No.1220 of 2014 in O.S.No.452 of 2011 seeking condonation of delay of 386 days in filing the set aside petition. The only ground shown in the application is that the petitioners could not adduce the evidence as the father of the second respondent was suffering from serious heart problem and he was busy in looking after him. The trial Court dismissed I.A.No.1220 of 2014, by its order dated 31.07.2015, observing as follows:

“11) His father had heart complaint on 2012 for the first time. As per Ex.P.7 his father went for medical check up on 10.06.2011. It was general check up. He was discharged immediately. He admitted that he executed documents of mortgage in favour of

Bank of Baroda after 15.11.2011. The evidence of this witness clearly shows that he was aware of the court proceedings from time to time the decree was passed on 17.06.2013. The case was coming up for defendants evidence from 02.04.2013. After giving three adjournments the evidence was closed on 29.04.2013. Then the case was posted for arguments. All the proceedings and admissions made by the petitioner gives an impression that he did not pursue the case wantonly. His pleading that he was engaged to attend his father, who was having heart ailment will not help the petitioner as his father was admitted in the hospital without serious heart ailment. There is no material placed before the court that his advocate had differences with client i.e. petitioner. In addition to that he had engaged younger brother of Sri L.Venkateshwar Rao and attending criminal cases. Therefore, the petitioner cannot say that he is not aware of the court proceedings in civil case. The petition itself is not properly framed. Affidavit is not reflecting the court proceedings and reasons which stopped the petitioner from filing this petition earlier and to condone the delay. This court finds that there are no merits in the petition, as such the petition is dismissed.”

4. As stated above, the petitioners engaged an Advocate and filed their written statement. They did not cross-examine P.W.1 and did not adduce any evidence. It is not as if the petitioners are not aware of the orders setting them *ex parte* or passing an *ex parte* decree, as they filed separate applications for reopening the case and also for setting aside the *ex parte* decree. Those applications were not pursued by the petitioners for the reasons best known to them. It also came on record that the petitioners have been pursuing the criminal cases filed against them.

5. In the circumstances, the order passed by the trial Court in I.A.No.1220 of 2014 in O.S.No.452 of 2011 dated 31.07.2015 is correct and it does not warrant any interference. Therefore, the Civil Revision Petition is dismissed. However, the amount equivalent to 50% of the decretal amount deposited by the petitioners, as per the orders of this Court dated 03.08.2015, would be subject to further orders in E.P.No.137 of 2014 in O.S.No.452 of 2011 pending before the trial Court.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Date: 04.01.2016
TJMR

A.RAMALINGESWARA RAO, J