

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

WEDNESDAY THE SIXTH DAY OF APRIL, 2016

PRESENT
HONOURABLE SRI JUSTICE S.V. BHATT

CIVIL REVISION PETITION NO. 1096 OF 2016.

Between:

Thimmareddy Leelavathamma ... Petitioner/Respondent/
Plaintiff

V/s.

Raka Impex Pvt.Limited
Anna Nagar, Chennai
Represented by P.K. Rangaramanujam ... Respondent/Petitioner/
Defendant

Counsel for the Petitioner: Sri V.Sudhakar Reddy

Counsel for the Respondent: Sri P. Sridhar Reddy

The court made the following: [order follows]

HONOURABLE SRI JUSTICE S.V. BHATT

CIVIL REVISION PETITION NO. 1096 OF 2016.

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ORDER :

Heard Sri V. Sudhakar Reddy for Revision Petitioner
and Sri P. Sridhar Reddy for respondent.

2. The Revision is at the instance of plaintiff in OS.No. 30 of 2004 in the Court of Senior Civil Judge, Gudur. The Revision is directed against the order dated 17/12/2015 in I.A.No. 409 of 2014 filed by respondent herein for condoning delay of 73 days in filing petition for restoration of I.A.No. 102 of 2011. Through the order impugned in the Revision, the trial court accepted the cause shown in the affidavit filed along with I.A.No. 409 of 2014 and allowed the application.

3. The admitted circumstances are that the respondent herein was set ex-parte in the suit and ex-parte decree was passed by the trial court. The respondent filed two applications;

one for condonation of delay in filing application to set aside the ex-parte decree and another to restore the suit to file and dispose of the same on merits. The application filed for condoning the delay was ordered by this court and I.A.No. 102 of 2011 was posted on 09/12/2014 for reporting whether the condition of Rs.1000/- costs imposed by the trial court was complied with or not. The respondent herein no doubt is complacent in prosecuting the litigation. On 09/12/2014 there was no representation, thereby I.A.No. 102 of 2011 was dismissed for default. Hence, the present application again for twin reliefs to condone the delay in filing an application to set aside the order dated 09/12/2014 and also to restore the application to file.

4. The trial court framed the following point for determination:

“Whether the petitioner made out sufficient cause to condone the delay of 73 days in filing the petition under Order 9, Rule 13 of Civil Procedure Code, 1908 to restore the I.A.No. 102 of 2011 as prayed for ?”

5. The operative portion of the order impugned reads thus:

The present Advocate may have accepted the

vakalath along with the earlier Advocate on record. But, upon seeing the petition in I.A.No. 102 of 2011, it was filed by the said N. Jagan Mohan Raju, Advocate and the address for service was also given as his address. So, the present Advocate on record may not represent him. However, the death of Advocate is a sufficient cause to condone the delay of 73 days in my view. But, at the same time, it is for the petitioner to prosecute his own case by appearing before the Court even after conditionally allowing I.A.No. 102 of 2011. As petitioner kept quiet, there was a delay of 73 days, but, as the death of the Advocate is a sufficient cause to condone the delay in my view. I am of view that in order to give a fair chance to both the parties, the petition is to be allowed by imposing further costs of Rs.500/- payable to the respondent on or before 07/01/2016, failing which, the petition stands dismissed. The point is answered accordingly.”

6. Sri V. Sudhakar Reddy for Revision Petitioner forcibly contends that the respondent herein has filed a shabby affidavit and a close reading of the averments in paragraph No.3 of the affidavit does not inspire confidence muchless sufficient cause shown for condoning the delay. Each one of the averment suffers from contradictions and ought not to have found favour with the trial court. According to him, the averments in the affidavit are not at all reliable and ought not to have been accepted by the trial court. He prays for setting aside the order under revision.

7. On the other hand, Sri P. Sridhar Reddy contends that dismissal of application on 09/12/2014 patently suffers from illegality and it can be presumed that the trial court would have

dismissed I.A.No. 102 of 2011 for want of information whether the condition imposed to restore the application was complied with or not. The condition has been complied with and suit ought to have been restored. In spite of restoring the suit I.A. was dismissed. Thus according to him, on 09/12/2014 the respondent herein has suffered prejudice, even assuming the affidavit does not inspire full confidence, the trial court has exercised its discretion having regard to totality of circumstances of the case. The suit is one for a substantive prayer of specific performance of agreement of sale on which there are several factual and legal contentions for consideration by the trial court. Having regard to the totality of the circumstances, he contends that the jurisdiction of this Court under Article 115 of CPC is not attracted and prays for dismissal of the Revision.

8. In normal circumstances, this Court would have strictly confined its consideration to the scope and object of Section 115 of CPC but the Counsel appearing for both sides have tried to persuade this Court with detailed submissions, therefore, little consideration to the extent required for the disposal of CRP is undertaken.

9. The circumstances relevant for disposal of the application are that on 09/12/2014 the trial court dismissed the application for twin reasons; namely, there was no representation for respondent and also that the condition imposed in I.A.No. 102 of 2011 was not complied with.

10. A close look at both the reasons, though different reasoning found favour with the trial court, this Court is of the view that once the condition of deposit of Rs.1000/- costs was complied with, the default in appearance does not attract dismissal of I.A.No. 102 of 2011. The trial court ought to have given a further date if it was brought to its notice that the condition is imposed and there was no representation for respondent. No doubt, the affidavit filed by the respondent herein in I.A.No. 409 of 2014 lacks details but cannot be termed as shabby as canvassed by the counsel for the petitioner.

11. Perused the material available on record and I am satisfied that minor contradictions if any pointed out by the petitioner do not warrant interference with the order under revision. Revision fails and accordingly dismissed. No order as to costs.

12. The trial court is directed to complete the trial and also

decide the matter as expeditiously as possible preferably on or before 31/8/2016. Sri V.Sudhakar Reddy draws attention of the Court that transfer application is pending before the Principal District Judge between the parties for transfer of two suits to one court. Therefore, the Registry is directed to communicate a copy of this order to the Principal District Judge as well to take a comprehensive decision in the pending matter for transfer of O.S.No. 30 of 2004 on the file of Senior Civil Judge, Gudur. If the parties do not co-operate, the trial court is given liberty to put parties on strict terms and conditions, and in spite of putting strict conditions, the parties still do not co-operate the trial court is given liberty to record reasons and proceed ex-parte in the matter.

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

JUSTICE S.V. BHATT

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