

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.3319 of 2015

Date: 04-01-2016

Between:

Punugoti Padmapriya and 3 others

.... Petitioners

AND

Chirumamilla Kondaiah and 6 others

.... Respondents

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.3319 of 2015

ORDER:

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The petitioners are defendants in O.S.No.174 of 2011 on the file of Additional Senior Civil Judge, Ongole. The respondents 1 to 7 herein filed the said suit for declaration that the sale deed dated 29-07-2010 executed by the 5th defendant in favour of the 1st defendant, sale deed dated 29-07-2010 executed by the 5th defendant in favour of the 2nd defendant, sale deed dated 14-10-2010 executed by the 5th defendant in favour of the 3rd defendant and the sale deed dated 14-10-2010 executed by the 5th defendant in favour of the 1st defendant as null and void. The respondents 8 and 9 are defendants 5 and 6 in the suit. The 3rd plaintiff was examined as PW.1 and Exs.A.1 to A.10 were marked. The suit was decreed ex parte and an ex parte decree was passed on 02-04-2013 declaring the sale deeds dated 29-07-2010, 29-07-2010, 14-10-2010

and 14-10-2010 executed by the 5th defendant in favour of defendants 1 to 4 as null and void.

The 2nd petitioner herein, who is the 2nd defendant in the suit, filed an application in I.A.No.1193 of 2014 seeking condonation of delay of 527 days in filing the petition to set aside the ex parte decree dated 02-04-2013. The 3rd plaintiff filed a counter and after considering the same, I.A.No.1193 of 2014 seeking condonation of delay was dismissed by order dated 09-07-2015. Challenging the same, the present Civil Revision Petition is filed.

The affidavit filed in support of the application seeking condonation of delay states that the suit was filed by the plaintiffs after filing of O.S.No.108 of 2011 by the 3rd defendant as well as O.S.No.109 of 2011 by the 4th defendant on the file of Principal Junior Civil Judge, Ongole. It is further stated that before receiving summons in the present suit, her husband met with an accident and after undergoing surgery he was on bed rest from 17-05-2011 to 04-09-2012. After receiving the summons in the suit, the other petitioners in the application approached the 2nd defendant and defendants 3 and 4 informed about the pendency of O.S.No.108 of 2011 and O.S.No.109 of 2011. All of them contacted their previous advocate and gave instructions to file written statement. Since her husband fell sick and petitioners 1 and 3 have no legal knowledge they believed the words of the 4th petitioner with regard to the pendency of the suit, but the 4th petitioner shifted his mechanic shed from Ongole to Azeez Nagar, Moinabad Mandal, Ranga Reddy District, as a result of which a communication gap occurred between him and their previous advocate. The 4th petitioner came to know about passing of decree in the suit prior to

Vinayakachavithi and the petitioners 3 and 4 contacted their present Advocate and he informed them that they did not file written statement and the Hon'ble Court passed an ex parte order against them. They were also informed that after passing an ex parte order, an ex parte decree was passed on 02-04-2013. After Vinayakachavithi in 2014, the other petitioners were contacted and informed of the above facts. Accordingly, the 2nd defendant/2nd petitioner herein filed written statement along with the documents secured by the 3rd defendant and the other defendants adopted the said written statement. They could not contest the case due to lack of legal knowledge and communication gap.

The 3rd plaintiff filed a counter stating that the petitioners engaged an advocate, he filed vakalat on 14-07-2011, the case was being adjourned for counters and written statements till 12-10-2011 and the case was posted for plaintiff's evidence to 29-09-2011. The suit was decreed later on 02-04-2013. The 3rd petitioner/3rd defendant filed O.S.No.108 of 2011 for permanent injunction based on the sale deed, which was later on cancelled in the present suit and the said suit was dismissed for default on 28-01-2014. The 3rd petitioner filed I.A.No.2079 of 2014 to condone the delay in seeking restoration of the suit along with the present petition in the present suit. In the said petition, it was stated that the 3rd petitioner contacted his previous advocate now and then but he did not come forward to represent the present case since he is aware of dismissal of the present suit. Similarly, the 4th petitioner also filed O.S.No.109 of 2011 seeking permanent injunction basing on the sale deed, which is now cancelled by the Court in the present suit and the said suit was also dismissed for default on 01-08-2014. He

also filed I.A.No.2080 of 2014 to condone the delay in seeking restoration of the suit and the averments made in the said petition are similar to that of the averments made by the 3rd petitioner in I.A.No.2079 of 2014. The 4th petitioner also did not file the present application. The 2nd petitioner herein is a resident of Ongole and she could have communicated with her advocates. In view of communication of the petitioners 3 and 4 with their advocate in the year 2013 itself, the averments made in the affidavit cannot be believed.

The application was ultimately dismissed, holding as follows:

“.....Here, in this case, there is no reason found for third and fourth petitioners/defendants 3 and 4 in not filing the present petition, when the second petitioner/D2 was unable to come forward and file the petition due to her husband's accident and ill-health. Hence, there is negligence on their part not only inadvertence. Plea of lack of knowledge and communication gap between Advocate and party is not valid ground to condone the delay. It is also to be observed that the respondents/plaintiffs have filed the depositions of the petitioners 3 and 4/defendants 3 and 4 in a criminal case and other connected documents to show that they are negligent in prosecuting the suit and the plaintiffs also pleaded that basing on the ex parte decree, a partition was effected among them under registered partition deed and they have taken possession of their shares. Hence, as per the ex parte decree, there were some changes made in the property in regard to possession of the same. Hence, it is clear that with the passing of ex parte decree, valuable right stood conferred on the respondents/plaintiffs and hence the condonation of delay without any sufficient cause would have the effect of taking away such rights.

As per the arguments of both sides and as per the decisions relied on by them and as per the facts and circumstances of the case, it is clear that the petitioners/defendants are not diligent in defending their suit and they have to face the risk of their own negligence and inaction and for want of bona fides in defending their case. The petitioners/defendants are not entitled to file the petition under Order-9 Rule-13 CPC to set aside the ex parte decree with inordinate delay of 527 days and to condone the same under this petition. Accordingly, the point is answered.....”

Learned counsel for the petitioners relied on an unreported judgment of the Supreme Court dated 15-10-2015 between **B.S. Sheshagiri Setty and others v. State of Karnataka and others**. He relied on the following observations of the Supreme Court which read as follows:

“.....Further, in the context of limitation, it has been held by this Court in a catena of cases that when what is at stake is justice, then a technical or pedantic approach should not be adopted by the Courts to do justice when there is miscarriage of justice caused to a public litigant. A three judge bench of this Court in the case of

State of Haryana v. Chandra Mani & Ors., (1996)3 SCC 132 **has held as under:-**

“The doctrine must be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

More recently, a two judge bench of this Court observed in the case of

Dhiraj Singh (Dead) through L.Rs. v. State of Haryana & Ors., (2014) 14 SCC 127 **as under:-**

“15...The substantive rights of the appellants should not be allowed to be defeated on technical grounds by taking hyper technical view of self-imposed limitations.....”

17. Further, Section 108 of the KCS Act confers the power on the State Government to pass any order as it may deem fit in case there has been a miscarriage of justice. The instant case falls squarely within the ambit of Section 108 of the KCS Act. The appellants have been rendered landless for more than two decades even after repaying the loan amount.

If this does not amount to gross miscarriage of justice caused to the appellants, we do not know what does.....”

In the said case, the Supreme Court was considering the case of small farmers, who availed a loan of Rs.16,000/- from the Cooperative Land Development Bank by mortgaging their entire immovable agricultural property as security for the same. The bank sold the property after obtaining an ex parte award from the Arbitrator. The farmers preferred appeal to the Karnataka Appellate Tribunal, Bangalore challenging the award. During the pendency of the appeal, the Government of Karnataka issued a notification exempting payment of interest. Taking advantage of that exemption, the farmers paid the balance amount to the bank, consequently the appeal preferred by them was allowed and the matter was remanded to the Arbitrator. Challenging the said order, a writ petition was filed before the High Court by the bank and the same was allowed by a learned Single Judge on the ground of limitation. In the writ appeal, the said order was confirmed. In the meanwhile, the Assistant Registrar of Cooperative Societies issued a certificate of sale in favour of the auction purchaser confirming the sale of the lands. The appeal to the Deputy Registrar was dismissed. The review also failed. A Revision Petition was preferred before the Minister of Cooperation and the same was allowed and the auction purchaser challenged the said order in writ petition. A learned Single Judge of the High Court quashed the order passed in the revision and the same was confirmed in writ appeal on the ground that the revision was barred by time. In those circumstances, since the small farmers paid the balance amount to the bank, the Supreme Court took a humanitarian approach and made the above observations. But, the facts stated in the present case are all together different. Two groups of private parties are fighting a civil

suit. After receipt of summons, the defendants did not contest the case and when an ex parte decree was passed, they filed a petition to set aside the ex parte decree seeking condonation of delay of 527 days. The said petition was filed on behalf of other defendants by one of the defendants justifying the ground of delay applicable to that defendant alone. No proper and sufficient cause was shown for condonation of delay. Thus, the facts in the present case are different.

The above facts show that this is not a case where suit summons were not served on the petitioners/defendants. It is their case that after receipt of suit summons they engaged their advocate with instructions to file written statement. The petitioners are defendants 1 to 4 in the suit. The petitioners 3 and 4 filed separate suits for injunction and the said suits were dismissed for default. However, they filed petitions for restoration of the said suits along with petitions to condone the delay. Though they filed applications in the year 2014, they did not file any affidavit in the present proceedings seeking condonation of delay in filing the petition to set aside the ex parte decree. The affidavit was filed by the 2nd petitioner. The 2nd petitioner is a resident of Ongole where the suit was pending. It is not as if the 2nd petitioner alone was prosecuting the case. The averments in the affidavit are vague and no proper reason was shown for not prosecuting the suit and seeking condonation of delay. The documentary evidence produced before the Court shows that the husband of the 2nd petitioner met with an accident on 17-05-2011 and even after the accident they engaged an advocate who filed vakalat on 14-07-2014. The husband of the 2nd petitioner was on medical leave from 17-05-2011 to 04-09-2012. The suit was decreed on 02-04-2013.

There is no plausible explanation for the delay from October 2012 to 02-04-2013 from the 2nd petitioner. So far as other petitioners are concerned, there is no explanation. In the circumstances, the order dated 09-07-2015 passed in I.A.No.1193 of 2014 in O.S.No.174 of 2011 on the file of Additional Senior Civil Judge, Ongole is correct and it does not call for any interference.

Accordingly, the Civil Revision Petition is dismissed. No costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. RAMALINGESWARA RAO, J

Date: -01-2016

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