

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.1813 of 2016

ORDER:

-
-
This Revision is filed challenging the order dt.18-01-2016 in I.A.No.1418 of 2014 in A.S.S.R.No.5008 of 2014 of the I Additional District Judge, FAC Principal District Judge, West Godavari at Eluru.

2. The petitioners in this Revision are defendants in the suit. The respondent filed the suit for specific performance of an agreement of sale and for injunction. The said suit was decreed *ex parte* 11-12-2009.

3. The petitioners filed A.S.S.R.No.5008 of 2014 before the Principal District Judge, West Godavari District at Eluru against the judgment and decree in the suit along with I.A.No.1418 of 2014 under Section 5 of the Limitation Act, 1963 (for short "the Act") to condone the delay of 1592 days in filing the appeal.

4. In the affidavit filed in support of the said application, it is stated that the petitioners are innocent persons; that they received summons and thereafter handed over the same to their Advocate to attend the Court and contest the suit promising to attend the Court whenever they are asked to

attend; but the Advocate did not do so and allowed the suit to be decreed. Petitioners contend that E.P. was also filed by respondent but he did not get possession and enjoyment of the plaint schedule property. They contend that respondent filed W.P.No.6678 of 2014 before this Court sought police aid for entering into the land, the petitioners were then called to the police station and asked to vacate the land and only then along with the village elders, the petitioners went to the Advocate on 30-03-2014 and questioned him. They contend that their Advocate colluded with the respondent since he did not give proper reply and made the petitioners believe that the suit is still pending. Petitioners also claim to have given a Complaint to the Bar Association and Police.

5. Counter affidavit was filed by respondent opposing this application. The respondent alleged that W.P.No.6678 of 2014 was filed by him seeking protection of his possession and he had not filed it to grant police aid to enter into the land, and that the possession of the schedule property was already with the respondent even by the date of execution of the agreement of sale itself. The respondent denied that he colluded with the petitioners' Advocate. The respondent contended that since the prices of the land got increased recently, the petitioners had filed

the appeal with abnormal delay.

6. By order dt.18-01-2016, the Court below dismissed the said application. It held that copy of the judgment of the trial Court in the suit indicates that written statements were filed by petitioners and evidence was also adduced by them. It observed that when the petitioners had participated in the trial and adduced evidence, their allegation that the Advocate kept them in dark cannot be accepted and so the delay of 1592 days is not liable to be condoned.

7. Challenging the same, this Revision is filed.

8. Learned counsel for petitioners contend that no prejudice would be caused to respondent if the delay of 1592 days in filing the appeal is condoned since the respondent is any way in possession of the plaint schedule property and that only because of lapse of the Advocate, the petitioners could not prefer the appeal in time.

9. I am unable to accede to this contention because the finding of the Court below is that the petitioners filed written statements in the suit and also adduced evidence and this finding is not disputed by the learned counsel for petitioners. Therefore the plea that they trusted their Advocate, who did not properly inform them about the

events in the suit, cannot be accepted. Serious prejudice would be caused to respondent if the delay of 1592 days, which is not properly explained by petitioners, is condoned.

10. Therefore I am of the opinion that the Court below did not commit any error of jurisdiction in dismissing I.A.No.1418 of 2014 by the impugned order.

11. The Civil Revision Petition is accordingly dismissed.
No costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 24-06-2016

Vsv/*