

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No. 3581 of 2015

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ORDER:

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The petitioner in the Civil Revision Petition is the judgment debtor in E.P.No.39 of 2010. O.S.No.77 of 2008 was filed by the 1st respondent for recovery of money and a decree was passed for an amount of Rs.66,078/- on 18.01.2010. To execute the said decree, E.P.No.39 of 2010 was filed for an amount of Rs.75,127/- on 15.04.2010 and the petitioner did not contest the EP proceedings and he was set ex parte. In order to realize the said amount, the property of the petitioner was brought to sale on 23.12.2011. After sale of the property in auction, the petitioner filed E.A.No.44 of 2012 under Order 21 Rule 19 for setting aside the same along with petition in E.A.No.45 of 2012 seeking stay of all further proceedings. In E.A.No.44 of 2012, the petitioner furnished security of Ac.0.70 cents of wet land belonging to his wife and the said land was accepted as security. After filing counter by the 1st respondent, the matter was posted for enquiry on 16.07.2014 and it was adjourned from time to time. The affidavit in lieu of chief examination was filed on 03.09.2014. The petitioner was absent on 17.09.2014. The petitioner did not express his readiness on number of occasions i.e., on 25.09.2014, 17.10.2014, 29.10.2014, 5.11.2014 and 10.11.2014 and the case was finally adjourned to 28.11.2014. Even thereafter, the matter underwent four adjournments. Ultimately on 17.12.2014 when the petitioner was absent and did not pay the amount of Rs.100/- imposed as costs, his application was dismissed.

In order to set aside the said Order of default, he filed E.A.No.233 of 2015 along with an application in E.A.No.234 of 2015 seeking condonation of delay of 195 days and E.A.No.234 of 2015 was dismissed on 19.08.2015. Challenging the same, the present C.R.P is filed.

In the affidavit filed in support of the application, it is stated that on 17.12.2014 the petitioner underwent 'Piles operation' and he came to know recently that the decree holder obtained orders of delivery of possession from the Court and, in those circumstances, he came to know about the dismissal of his application. Accordingly, he sought for condonation of delay of 195 days.

A counter was filed to the said application stating that the property of the petitioner was got attached before judgment in I.A.No.288 of 2008 and after passing the decree, the petitioner filed claim petition in E.A.No.283 of 2010 by his wife and the said petition was dismissed for default. He also filed Insolvency Petition to declare him as an insolvent and the said application was also dismissed. After sale of the property, he filed E.A.No.44 of 2012 alleging certain irregularities, but he did not cooperate for his cross- examination. After dismissal of E.A.No.44 of 2012, the sale was confirmed and sale certificate was also issued to the second respondent and the property was delivered to him. It was also stated that the petitioner did not show any *bona fide* and genuine reasons for setting aside the order of dismissal dt. 17.12.2014.

In the face of rival pleadings, the trial Court dismissed the application holding that it is the responsibility of the petitioner to know the proceedings at least even after discharge from the hospital, if really he underwent any surgery and stayed in the hospital till 20.12.2014. The lower Court narrated the history of non cooperation of the petitioner and made the following observations:

“ As could be seen from the record, the petitioner filed EA No.44 of 2012 and E.A 45 of 2012 on 30.12.2011. The said application in E.A.No.44/2012 was posted for the evidence of petitioner and at least he filed his chief affidavit on 03.09.2014 and though several opportunities were given to the petitioner from 03.09.2014 for further chief examination of the petitioner, he failed to attend the Court inspite of imposing costs on several adjournments and also the conditional order. At last the matter was posted to 17.12.2014 on payment of costs of Rs.100/- and on condition that the petition will be dismissed. On 17.12.2014 the petitioner failed to attend the Court, costs not paid and since there was also no representation for the petitioner, the petition was dismissed. Even according to the petitioner, he underwent operation on 10.12.2014, but the petitioner failed to attend the Court since 17.09.2014 till the date of dismissal. There is no explanation by the petitioner for his absence on any of the adjournments prior to 17.12.2014.

A part from it, even after 20.12.14 till which date he was in the hospital, the EP was not closed and the sale was also not confirmed till 18.02.2015. The petitioner has got ample opportunity to approach the Court even before the conformation of sale. Moreover, on 2.4.15 the property was delivered to the second respondent, by removing the judgment debtor from the schedule property. The endorsements of the amin shows that the judgment debtor was also present and he was removed and the property was delivered to the auction purchaser in his presence. But the petitioner filed this application on 01.07.2015 nearly 3 months after his knowledge about the delivery of property.

It is the responsibility of the petitioner to know the proceedings, at least after he was discharged from the hospital. If really, he underwent any surgery and stayed in the hospital till 20.12.2014, he would have appeared before the Court and file the application to set aside the dismissal order, in time. But filing of this petition after lapse of 195 days shows that the petitioner is very much negligent in prosecuting his application. There is no explanation from the petitioner for the delay caused from the date of his discharge from the hospital or at least from the date of his knowledge about delivery of the property, to the second respondent which is on 02.04.2015. “

The affidavit filed in support of the application did not show any reason for not approaching the Court immediately after the discharge from the hospital.

Learned counsel for petitioner relied on the judgments of this Court as well as the Apex Court reported in **Godavarthy Venkateswarlu v. Yellanki Ravi Shankar and another, C. Ryan Babu v. BKL Treders, Gajuwaka, Visakhapatnam and another, Ram Nath Sao alias Ram Nath Sadhu and others v. Gobardhan Sao and others and Improvement Trust, Ludhiana v. Ujagar Singh and others** and those decisions are not applicable to the present set of facts, as they deal with the irregularities in the conduct of sale, but not seeking condonation of delay of the application filed for setting aside the sale. The history of non cooperation of the petitioner and his remaining absent in the execution proceedings show that the petitioner was not *bona fide* in prosecuting his case.

In the circumstances, this Court feels that the Order passed by the trial Court is correct and it does not warrant interference of this Court.

Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 01.02.2016

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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