

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.4134 OF 2016

O R D E R

This civil revision petition under Section 115 CPC arises out of the order dated 16.06.2016 passed by the learned Principal Senior Civil Judge, Ranga Reddy District, in I.A.No.1307 of 2015 in O.S.No.424 of 2010. The petitioners are the defendants in the suit, which was decreed *ex parte* on 14.07.2014. They filed the subject I.A. for condonation of the delay of 482 days in seeking the setting aside of the *ex parte* judgment and decree. By the order under revision, the trial Court dismissed the I.A. Hence, this revision.

The respondent/plaintiff filed O.S.No.424 of 2010 for recovery of the possession of the suit schedule property from the petitioners/defendants along with mesne profits. The petitioners/defendants filed their written statement therein in February, 2011. The suit was decreed *ex parte* in July, 2014.

In the affidavit filed in support of their condone delay petition, the petitioners/defendants stated that they had purchased the suit schedule property from one Jitta Ramesh under a registered Agreement of Sale-cum-General Power of Attorney bearing Document No.1585 of 2008 dated 04.04.2008. They claimed that Jitta Ramesh thereafter cancelled their Agreement of Sale-cum-General Power of Attorney unilaterally under a registered Cancellation Deed bearing Document No.3336 of 2008 dated 06.08.2008 and then sold the suit schedule property to the respondent/plaintiff under a registered Sale Deed bearing Document No.3417 of 2008 dated 19.08.2008. They alleged that basing on this Sale Deed, which was a sham and nominal document, the respondent/plaintiff sought recovery of

possession from them. They asserted that after filing of the suit, they had lodged a police complaint which resulted in registration of Crime No.437 of 2010 on the file of Pahadi Shareef Police Station under Sections 406 and 420 IPC. After filing of the charge sheet, the case was taken on file by the competent criminal Court as C.C.No.87 of 2011. However, Jitta Ramesh came forward to compromise the matter and entered into a Memorandum of Understanding with them on 17.06.2014. This compromise was stated to have been recorded by the Lok Adalat in C.C.No.87 of 2011. As per this compromise, Jitta Ramesh was to settle the matter with the respondent/plaintiff. They claimed that they were therefore under the impression that he would have done so. However, they were informed by their tenants that some persons were regularly visiting the property and making queries for its purchase. They thereupon made enquiries and came to know that the suit was decreed *ex parte*. The respondent/plaintiff was stated to have filed E.P.No.54 of 2015 seeking execution of the *ex parte* decree. They therefore asserted that their failure to appear before the trial Court was neither intentional nor wanton and that the *ex parte* judgment and decree dated 14.07.2014 needed to be set aside to permit them to contest the suit on merits. They accordingly prayed for condonation of the delay of 482 days in taking steps.

The respondent/plaintiff filed a counter affidavit contesting the petition.

The trial Court took note of the fact that the defendants had filed their written statement in the suit but did not choose to participate in the trial thereafter. Observing that the petitioners/defendants had not even filed the so called compromise recorded by the Lok Adalat, the trial Court held that in any event, neither the said

compromise nor the Memorandum of Understanding dated 17.06.2014 were binding on the respondent/plaintiff, who was not a party thereto. The trial Court observed that the petitioners/defendants failed to explain the day-to-day delay satisfactorily and had not made out a case for interference with the *ex parte* judgment and decree and accordingly dismissed the I.A.

Sri M.A.K.Mukheed, learned counsel for the petitioners/defendants, would contend that his clients were under the *bonafide* impression that Jitta Ramesh would settle the matter with the respondent/plaintiff and having trusted him to do so, they did not monitor the progress of the litigation despite filing a written statement. He would submit that an opportunity requires to be given to his clients so as to contest the suit claim on merits as they would not only be divested of their possession over the suit schedule property but would also have to pay mesne profits as directed by the trial Court *per* its judgment and decree dated 14.07.2014.

Per contra, Sri M.R.Harsha, learned counsel for the respondent/plaintiff, would submit that the judgment rendered by the trial Court was on merits in as much as the petitioners/defendants had already filed their written statement and therefore, if they were aggrieved thereby the proper remedy is to file a regular first appeal. Learned counsel would further point out that the petition filed for condonation of delay was lacking in *bonafides* as the delay was not explained satisfactorily. He would therefore assert that no grounds are made out for interference with the order under revision.

Perusal of the affidavit filed by the petitioners/defendants in support of their condone delay petition demonstrates that no specific details were set out as to when they came to know about the *ex parte*

judgment and decree passed in the suit. Except for stating that they relied upon the so called Memorandum of Understanding dated 17.06.2014 and the compromise with Jitta Ramesh before the Lok Adalat, no other details were spelt out in relation thereto. So much so, the date of the said compromise is not even mentioned. As rightly pointed out by the trial Court, there is no proper explanation for long delay on their part. The Memorandum of Understanding dated 17.06.2014 entered into by the petitioners/defendants with Jitta Ramesh does not bind the respondent/plaintiff. That apart, the petitioners/defendants did not even state as to whether they have initiated any other action in relation to the cancellation of their Agreement of Sale-cum-General Power of Attorney dated 04.04.2008 under Cancellation Deed dated 06.08.2008 and the subsequent registered sale in favour of the respondent/plaintiff. Having allowed the said actions of their vendor, Jitta Ramesh, to remain untouched, no value can be attached by them to the Memorandum of Understanding dated 17.06.2014 executed by Jitta Ramesh, after parting with his title over the suit schedule property in favour of the respondent/plaintiff.

Be it viewed from any angle, this Court finds no irregularity in the order passed by the trial Court warranting interference in this revision.

The civil revision petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

18th NOVEMBER, 2016
PGS