

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION NO.1585 OF 2015

ORDER:

This Civil Revision Petition is filed challenging the order, dated 30-10-2014 in C.M.A.No.71 of 2013 on the file of the XIII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad.

2. Petitioner herein is the 2nd defendant, whereas the 1st respondent herein is the plaintiff and respondents 2 to 5 are the defendants 1 and 3 to 5.

3. 1st respondent herein-plaintiff filed O.S.No.1182 of 2008 on the file of the II Senior Civil Judge, City Civil Court, Hyderabad for specific performance of agreement of sale, dated 05-05-2007 executed by the 1st defendant and her son in respect of house property bearing Municipal No.6-3-1080 to an extent of 25 square yards, situated at Rajbhavan Road of Khairtabad Mandal, Somajiguda, Hyderabad. 2nd defendant engaged an advocate, who filed vakalat on 18-08-2008. He undertook to file vakalat on behalf of defendants 3 to 5 and 1st defendant was set ex-parte on the said date, 18-09-2008. On the next date of hearing on 13-10-2008, the said advocate did not file vakalat on behalf of defendants 3 to 5 nor filed any written statement. It was adjourned to 13-11-2008. When no written statement was filed, they were set ex-parte on

13-11-2008 and the suit was adjourned to 17-12-2008. 2nd defendant along with other defendants filed an application under Order IX Rule 7 CPC to set aside the ex-parte order, dated

13-11-2008 and the said application was allowed on 18-03-2009 subject to payment of costs and filing of written statement by

06-04-2009. The said order was not complied with. Later on, an ex-parte decree was passed on 17-06-2009. After passing of the ex-parte decree, petitioner herein (D2) filed an application seeking condonation of delay of 112 days in filing the application to set aside the ex-parte decree and the said application was allowed. An identical affidavit was filed in I.A.No.258 of 2009 seeking to set aside the ex-parte decree and the said application was dismissed on 13-04-2011 by the learned II Senior Civil Judge, City Civil Court, Hyderabad narrating the sequence of events and

observing as follows:

“In view of the docket proceedings, it is crystal clear that the petitioner herein having filed a sworn affidavit in IA No.157/2009 and having failed to file written statement as directed by this court, once again she approached this court pleading ignorance of the suit proceedings which is nothing but filing a false affidavit on oath before this court. Having regard to the facts and circumstances of the case, I therefore, find that the petitioner/defendant No.2 is well aware of the suit proceedings and pursuing the matter and only to protract the litigation she has resorted to file this type of application without showing any sufficient cause. Hence, in my opinion absolutely there are no merits. Entertaining this application amounts to miscarriage of justice. Accordingly, this point is answered against the petitioner.

In the result, the petition is dismissed.”

Against the said order, the petitioner herein preferred C.M.A.No.71 of 2013 and the same was also dismissed on 30-10-2014. Challenging the same, the present revision is filed.

4. This Court carefully perused the pleadings of the parties. The suit was filed for specific performance of agreement of sale against five defendants and the petitioner herein is the 2nd defendant in the suit. In fact, the petitioner engaged an advocate, who wanted to file vakalat on behalf of defendants 3 to 5, who are family members of 2nd defendant. Even on behalf of the 2nd defendant also, no written statement was filed. It is not as if, the 2nd defendant is alone without any assistance. An application was filed by counsel to set aside the ex-parte order. When the said application was allowed, she did not comply with the condition imposed in the order by filing written statement. When an ex-parte decree was passed, she filed an application seeking condonation of delay for setting aside the ex-parte decree. Though this Court is not satisfied with the manner of disposal of appeal by the learned XIII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, in the facts and circumstances of the case, this Court is not inclined to interfere with the impugned judgment.

5. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any pending in this petition shall stand closed.

A.RAMALINGESWARA RAO, J

DATED: 04-02-2016

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