

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION NO.2262 OF 2015

ORDER:

This Civil Revision Petition is filed challenging the order, dated 12-11-2014 in I.A.No.1886 of 2011 in O.S.No.30 of 1999 on the file of the Senior Civil Judge, Khammam.

2. Petitioners herein are the defendants 1 to 4, whereas the respondents 1 to 3 herein are the plaintiffs 1 to 3 and respondents 4 to 6 are the defendants 5 to 7 in O.S.No.30 of 1999.

3. Respondents 1 to 3 herein filed the above suit seeking payment of damages of Rs.3,00,000/- towards cost of structures of demolished house bearing No.11-6-193, situated at old Jid Grain Market area on Suryapet to Ashwaraopet road, near Nayabazar High School, Khammam Town. The said suit was filed on 26-08-1998 and the written statement was filed on 12-09-2000. The suit was contested till 30-08-2006 and the defendants were set ex-parte on that date and an ex-parte decree was passed on 30-08-2006. Thereafter, the plaintiffs filed Execution petition on 16-06-2011 seeking attachment of movables situated in the office of the 1st defendant and no relief was sought for against the 4th defendant. At that stage, the petitioners herein filed the above interlocutory application under Section 5 of the Limitation Act, 1963 seeking to condone the delay of 1877 days in filing the application under Order IX Rule 13 CPC seeking to set aside the ex-parte decree passed on 30-08-2006. The affidavit filed in support of the interlocutory application seeking to condone the delay reads thus:

“That I have assumed charge on 10-01-2011 and until then I was working at Mahaboobabad. As such I do not have any personal knowledge about the present matter. However the present E.P. was brought to my notice on 01-11-2011 vide letter bearing RC No.LC3/58/99 dated 07-09-2011 addressed to my office along with the Tahsildar, Khammam Urban and Municipal Commissioner, Khammam.

That upon perusing the old files connected to the matter I could understand that myself and other defendants were set ex-parte on 30th August 2006. But however inadvertently the same could not be brought to the notice of the then Government Pleader and due to rush of work the matter was kept aside without being attended carefully by my predecessor officers.

That myself and other defendants have good case to contest and

there is likelihood of the suit which was decreed on 30-08-2006 being dismissed.”

4. The plaintiffs filed a detailed counter opposing the said application.

5. After considering the material on record, the trial Court dismissed the above interlocutory application vide impugned order. Hence this revision.

6. Before the trial Court, the learned Government Pleader submitted that as the matter relates to the Government, there would be delay in dealing with the matter by the Government officials and the Court should be liberal in condoning the delay. He relied on a decision reported in AIR 1991 ALL. 229 (D.B.).

7. The plaintiffs vehemently argued and opposed the application seeking condonation of delay by placing reliance on a decision of the Supreme Court in S.L.P. (Civil) No.882 of 2014, dated 10-01-2014 and another decision in Civil Appeal No.2970-2971 of 2012, dated 09-04-2012.

8. The trial Court considered the cases cited before it and dismissed the application by observing as follows:

“As already mentioned above, in the case on hand, there is delay of 1877 days i.e., more than five years and the only explanation submitted by D4 is that she took charge on 10-01-2011 and only through a letter, dated 07-09-2011 addressed to her office, she came to know about the proceedings and also about filing of E.P. The petitioners/D1 to D4 did not mention even the names of the officers, who worked earlier and why there is inordinate delay from 2006 to 2011 and the explanation mentioned in the affidavit of petitioner No.4 is not at all satisfactory and there is gross negligence on the part of the petitioners even in explaining the delay properly. In the digest notes relied on by the Government Pleader, the number of days of delay is not mentioned and it was observed that the court has to adopt liberal approach while dealing with delay caused due to lapse on the officials of Government department. But, in the decision relied on by the learned counsel for respondent Nos. 1 to 3, the Hon’ble Supreme Court clearly held that no different approach can be adopted while considering ‘sufficient cause’ in respect of a private party or Government department and the court should bear in mind that legal right, which has accrued by the decree holder by lapse of time should not be lightly disturbed. On a careful consideration of the affidavit, counter and the material available on record and the arguments submitted by both parties, I am of the opinion that the petitioners have failed to explain the delay of 1877 days in filing the application under Order 9 Rule 13 of CPC. Therefore, the contention raised by the learned Government Pleader cannot be

accepted.”

9. In order to give an opportunity to the petitioners, I asked the petitioners to file an additional affidavit indicating the detailed reasons at least even before this Court. Accordingly, they filed the additional affidavit, which reads as follows:

“It is submitted that initially the suit was dismissed at the first instance on 16-03-2004 and the same was restored on its file. It is submitted thereafter, this suit came to be decreed exparte on 30-08-2006. It is submitted that the following officers were serving during the said period:

Sri J.Chandrasekhar Rao served as Deputy Executive Engineer from 30-05-1995 to 16-05-2011, thereafter Sri N>Emmanuel service from 17-05-2001 to 25-08-2007, thereafter Sri B.Lakshman served from 25-08-2007 to 5-9-2007, thereafter Sri Y.Suryaprakash served from 5-9-2007 to 10-1-2011, thereafter Sri Bhaskar Rao served from 10-1-2011 to 10-1-201 and thereafter as he serving till date.

It is submitted that it was due to the frequent change of officers, the matter could not be effectively prosecuted and the delay caused in filing the application is neither wilful or wanton. But for the fact that the same could not be followed up due to frequent change in the officers. It is submitted that the court below, observed that the details of the officers who were in the office prior to 2006 till I had taken charge was not disclosed. It is submitted that nondisclosure of the officers concerned as observed by the court below was not deliberate and only bonafide. It is humbly submitted that the above statements may kindly be considered in the interest of justice.”

A perusal of the additional affidavit shows that no action was taken against any negligent officer and no explanation was given in the affidavit seeking condonation of delay in spite of giving an opportunity. In the circumstances, the impugned order does not call for any interference by this Court.

10. 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: 19-01-2016

Hsd