

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No.3065 OF 2017

Dated:20.12.2017

Between:

Thota Sambaiah, S/o. Chandraiah,
Aged 48 years, Occ: Agriculture,
R/o.Chelpur Village, Ghanpur
(Mulugu) Mandal, Warangal District

.. Petitioner

And

Badithala Mallaiah, S/o. Durgaiah,
Aged 50 years, Occ: Singareni employee,
R/o.Q.No.T2-535, Krishna Colony,
Bhupalpally Village and Mandal,
Warangal District

.. Respondent



The Court made the following:

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ORDER:

Heard learned counsel for the petitioner and learned counsel for the respondent.

2. Respondent/plaintiff instituted suit praying to grant declaration and possession of the suit schedule property. The suit was originally instituted in the Court of Principal Senior Civil Judge, Warangal, and was assigned O.S.No.137 of 2008. Later, it was transferred to Junior Civil Judge's Court at Mulugu and re-numbered as O.S.No.23 of 2011. The suit was not contested by the defendant and it was decreed by judgment and decree dated 07.07.2014. The trial Court noticed that in spite of granting several adjournments and passing conditional order, defendant has not availed the opportunity of giving his evidence and proving his possession and therefore his evidence was closed. On assessment of the material on record, the decree was granted in favour of the respondent/plaintiff. Seeking enforcement of the decree, plaintiff filed E.P.No.2 of 2015. Defendant contested the E.P. However, E.P. was allowed on 25.02.2016.

3. Learned counsel for the respondent/plaintiff states that possession of the suit schedule property was handed over to the plaintiff. It is also proper to note at this stage that the petitioner filed C.R.P.No.1369 of 2016 challenging the order in the E.P. contending that as the appeal is pending, the execution Court ought not to have directed delivery of possession. But, the said

contention was not accepted. The said revision was dismissed by order dated 11.03.2016.

4. Defendant preferred Appeal Suit in the Court of Principal District Judge, Warangal. As there was delay in filing the appeal, he filed I.A.No.30 of 2016 praying to condone the delay of 509 days in filing the appeal. The said application was dismissed by order dated 20.04.2017, against which the present revision is preferred.

5. Learned counsel for the petitioner/defendant submits that there was fire accident in the house of the defendant; he lost all his belongings because of the said fire accident and he was also mentally affected. He further submits that because of the said incident, defendant could not properly prosecute the case before the trial Court and also there was delay in preferring the appeal. According to learned counsel, the delay is neither willful nor deliberate.

6. Learned counsel for the respondent/plaintiff submits that the delay is not properly explained and there was unreasonable long delay in preferring the appeal. He submits that during the period defendant was contesting the E.P., he was having knowledge about granting the decree in the suit and therefore he ought to have taken steps to prefer an appeal against the decree granted to the respondent/plaintiff. He further submits that the reason assigned is not valid as the alleged fire accident took place on 11.01.2013, whereas the suit was decreed on 07.07.2014. He further states that no material is brought on record that he was mentally affected after fire accident and therefore, submits that the defendant has not come with clean hands.

7. The first appellate Court declined to condone the delay by taking note of the various stages concerning the issue including the contest in the E.P. and observed that though the defendant was aware of the decree granted against him, he did not take immediate steps. The reasons assigned now are not valid to accept the same for condonation of delay.

8. Learned counsel for the petitioner submits that though there were lapses on the part of the petitioner/defendant, having regard to the claim in the suit, he may be permitted to prosecute the appeal and he is willing to pay costs for the delay in prosecuting the litigation. However, learned counsel for the respondent/plaintiff submits that as the possession was already delivered, any order passed in favour of the defendant would affect the possession also and therefore opposes for condonation of delay.

9. It is no doubt true that there was delay of 509 days in preferring the appeal against the decree passed by the trial Court. The stand of the defendant in seeking condonation of delay is that he was mentally affected on account of fire accident and therefore could not prosecute the litigation properly. However, as noticed by the first appellate Court, the fire accident occurred on 11.01.2013, whereas the decree was passed on 07.07.2014 and defendant contested the E.P., but no steps were taken to prefer appeal. Condonation of delay in preferring a petition or an appeal has to be considered having regard to the genuineness of the claim. It is not a matter of right that for a litigant to seek condonation of delay for mere asking, more so when delay of 509 days is huge. However, having regard to valuable right to property involved in the case and

that the decree was also not contested on merits, the Court is of the opinion that one opportunity be afforded to the defendant.

10. Having regard to the issue involved in the suit, the Court is inclined to grant the relief of condoning the delay, subject of course, to defendant paying costs of Rs.10,000/- (Rupees ten thousand only) to the plaintiff. Further, as the possession was already granted in favour of the plaintiff, he shall not be evicted till the appeal suit is decided finally. The costs shall be paid within a period of three weeks from the date of receipt of a copy of this order. It is made clear that if costs are not paid within three weeks from the date of receipt of a copy of this order, the order passed by the first appellate Court shall revive.

11. The Civil Revision Petition is accordingly allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any, filed in this Civil Revision Petition shall stand closed.

Date:20.12.2017

KH

P. NAVEEN RAO, J