

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION NOS.1789 & 1942 of 2017

COMMON ORDER :

Heard Sri V.Jagapathi, learned counsel for the petitioner and Sri P.Jagadish Chandra Prasad, learned counsel for the respondents and perused the records. CRP No.1789 of 2017 is filed against an order passed in I.A.No.929 of 2016 and CRP No.1942 of 2017 is filed against an order passed in I.A.No.385 of 2010. Since a common order came to be passed in both the applications, the present revisions are disposed of by this common order.

2. The circumstances which lead to filing of the Civil Revision Petitions are as under:

The petitioner in both the revisions is plaintiff. O.S.No.327 of 2003 came to be filed by the plaintiff against the defendants seeking specific performance of contract based on alleged agreement of sale. The said suit was dismissed for default on 31.08.2004. Thereafter, on 30.09.2009, the Field Assistant of the Court below went to the village for delivery of the possession of the plaint schedule property, to the plaintiff. On that the defendant came to know that the plaintiff has filed a petition in I.A.No.96 of 2004 under Order 9 Rule 9 of CPC to set aside the order of dismissal dated 31.08.2004, which was allowed, behind the back and without any service of notice to the defendants. Subsequently, basing on the decree, the plaintiff filed E.P.No.3 of 2008 for execution of the decree, without any notice to the defendants. It is further stated that subsequent to the decree, the plaintiff executed a gift deed to her brother

on 09.02.2010. The material on record would show that the defendant was again interfering with the property in dispute and the plaintiff filed O.S.No.83 of 2010, seeking permanent injunction. It is stated that an application came to be filed to set aside the ex-parte decree with a delay of 814 days. I.A.No.385 of 2010 and I.A.No.929 of 2016 came to be filed under Section 5 of the Limitation Act and under Order IX Rule 13 of CPC to set aside the decree passed against her on 20.06.2007. Both the applications were allowed on payment of costs. The same is the subject matter of challenge in the present revision.

2. The main ground urged by the learned counsel for the petitioner is that the procedure followed by the Court below in passing a common order for petitions filed under Section 5 of the Limitation Act and under Order IX Rule 13 of CPC is illegal and improper. According to him, the Court below ought to have condoned the delay in the first instance and then take up the application seeking to set aside the exparte decree. The same is opposed by the learned counsel for the respondents contending that number of factual aspects were not brought to the Court and if the order under challenge is seen, the real facts would come to the light. In any way, he submits that if there is no procedural irregularity, the same would not cause any prejudice to either of the parties.

3. As seen from the record, the application to condone the delay under Section 5 of the Limitation Act came to be filed in the year 2010 with a delay of 814 days. Six years thereafter, another application including to set aside the ex-parte decree under Order IX Rule 13 of CPC was filed. Both these applications were taken up together and then the common order is passed. As seen from the record, the plaintiff filed a suit for

specific performance of contract which was dismissed and thereafter he made an application vide I.A.No.96 of 2004 to set aside the dismissal order passed in 31.08.2004, which was allowed. E.P.No.3 of 2008 came to be filed by the plaintiff for execution of regular registered sale deed executed on 19.03.2009 by the Court below on behalf of both the defendants and thereafter delivery was affected as per orders in E.A.No.286 of 2009 and then E.P. was closed on 09.10.2009. Thereafter, the petitioner filed an application to set aside the exparte order passed against him in the said E.P. Further, as seen from the record, at the first instance, the suit viz. O.S.No.327 of 2003 was dismissed for default and then the plaintiff filed an application to restore the suit, which was allowed. Thereafter, the plaintiff filed an application under Order XXVI Rule 9 to record the evidence which was allowed, in that petition, learned counsel for the defendants made an endorsement that notice may be ordered to the parties. Subsequently batta was paid by the plaintiff and it appeared that notice was also served on the defendants. But however, they remained absent on 20.03.2007 and remained ex-parte on 21.03.2007. An Advocate Commissioner was appointed to record the evidence of PW1, who in turn returned the warrant and the said petition was closed on 13.06.2007. Thereafter, both the defendants therein were set exparte and the case was posted for plaintiff's evidence. As per the docket order dated 13.06.2007, the Advocate Commissioner returned the warrant in I.A.No.1299 of 1999, stating that the counsel for the defendants are not co-operating to record the evidence of the witness, which lead to closure of the petition. The chief affidavit of PW1 was already filed and Ex.A1 was marked and then suit was decreed on 18.06.2007 itself. Apart from that, it is also to be noted that as per the said proceedings, there is

no clarity as to whether any notice was served on the second defendant. Further, though the suit was filed in the year 2003, but having regard to the fact that the orders came to be passed without proper service of notice on the defendants, the trial Court exercised its discretion in condoning the delay of 814 days, though the learned counsel tried to point out that the irregularity committed by the trial Court in passing both the orders in the both the I.As. at one time. Since this being a technical irregularity and as no prejudice would be cause to the parties, this Court is of the opinion that in the interest of justice and as the matter relates to execution of purported agreement of sale, the order under challenge warrants no interference by this Court.

4. Having regard to the above circumstances, the Civil Revision Petitions are dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, shall stand closed.

09.08.2017
vhb

JUSTICE C. PRAVEEN KUMAR