

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION No.1688 of 2017

ORDER : (Oral)

Vide the present petition, the petitioner seeks directions thereby to set aside the order and decree dated 19th January 2017 in E.A.No.340 of 2016 in E.A.No.208 of 2014 in E.P.No.385 of 2010 in O.S.No.226 of 2006 on the file of I-Additional Senior Civil Judge, Guntur and consequently allow E.A.No.340 of 2016.

2. As stated in the present petition, the petitioner filed E.A.No.340 of 2016 under Section 5 of the Limitation Act, to condone the delay of 82 days in filing application to set aside the order of dismissal for default on 29th June 2016 by contending that she filed claim petition claiming that the E.P. Schedule property belong to her by virtue of Gift Deed made by her father. Accordingly, the case was posted for her evidence. However, on 29th June 2016, she could not present before the Court for adducing her evidence and the Court called her absent and dismissed the petition for default on the same day.

4. After considering rival contentions, the learned trial Court gone through the affidavit filed by the petitioner in support of the petition, which shows that the petition was filed by her claiming right over the E.P. Schedule property by contending that the E.P. Schedule property was gifted to her by her father. The cause shown by the petitioner for her absence as on the _____ date _____ of _____ dismissal order _____

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g that the cause shown by the petitioner to condone the delay is only an invented one and is not supported by any medical certificate and further contended that the petitioner had previously filed claim petition E.P.No.210 of 2007 claiming right over the E.P. Schedule property and also filed petition for setting aside the sale and succeeded in her attempt. When the decree holder filed E.P., she came forward with a claim petition in the year 2010, only to harass the respondent/decreed holder, who is aged about 73 years and is a retired Teacher.

6. The learned Court observed that the docket in E.A.No.208 of 2014 would reveal that the claim petition in E.A.No.208 of 2014 was coming up for enquiry since 29.12.2014 and on 25.02.2015, examination in chief affidavit of petitioner was filed and coming up for marking the documents and for cross-examination. Since then, it is coming up for cross-examination till 18.06.2015. However, on the said date, petitioner, as PW-1, was called absent and a Memo was filed stating that Judgment Debtor No.2 (Respondent No.2) died. For steps, case was posted to 2nd July 2015. Since then, it was coming up for taking steps. Again the matter was posted for marking the documents and cross-examination of petitioner/PW-1 from 21st

March 2016 till the claim petition was dismissed due to absence of PW-1 and non-payment of costs imposed on the claim petitioner on 29.06.2016. Accordingly, the learned Court opined that it is clear from the docket proceedings in E.A.No.208 of 2014, the claim petitioner is not showing interest to get the claim petition disposed of, for taking appropriate steps at appropriate time and even inspite of conditional orders passed by the Court, the petitioner did not turn up before the Court and tender herself for cross-examination. Ultimately, the petition was dismissed for default.

7. As observed by the Court below, the docket proceedings show that on 06.06.2016, the petitioner was called absent and there was no representation on her behalf. Accordingly, the Court extended time till 13.06.2016 with a condition that if petitioner/PW-1 fails to get ready, the petition will be disposed of in accordance with law, but inspite of the same, the petitioner failed to appear before the Court and the Court proceeded with the matter.

8. The petitioner has failed to file any proof either before the Court below or before this Court in support of the ground taken by her that as she was suffering from Jaundice, the delay of 82 days occurred in filing the petition for setting aside the order of dismissal for default, dated 29.06.2016.

9. As per the settled law, day-to-day delay has to be explained, but the petitioner herein failed to do so. Therefore, I find no illegality or perversity in the order passed by the Court below.

10. Finding no merit in the petition, the revision petition is dismissed.

Pending miscellaneous applications, if any, shall stand closed.

9th June 2017

ajr



SURESH KUMAR KAIT, J