

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Civil Revision Petition No.1198 of 2013

ORDER:

This civil revision petition is filed questioning the order dated 22.01.2013 in IA (SR) No.1281 of 2012 in un-numbered IA of 2012 in OS No.240 of 2007 passed by the Senior Civil Judge, Narsapur, West Godavari District.

2. Brief facts of the case are that the petitioners are the defendants in the suit OS No.240 of 2007 and the respondent herein filed the said suit against them seeking relief of specific performance of agreement of sale dated 06.09.2007. It is further stated that the said agreement of sale is a fabricated one and they never executed any such agreement in favour of the respondent. When the said suit was posted for trial, PWs.1 to 3 were examined before a Court Commissioner. It is stated that the petitioners are the residents of Nidadavolu, that in the suit, the address of the petitioners were shown wrongly in the cause title and because of it the letter sent by their Advocate was not served on them and they could not give instructions to their counsel to cross-examine the witnesses. The said suit was decreed *ex-parte* on 11.02.2011. They came to know about the *ex-parte* decree only when they received notices in EP No.129 of 2011. Hence, there was delay of 338 days in filing the petition to set aside the *ex-parte* decree dated 11.02.2011.

3. Learned counsel for the petitioners contended that the petition filed by the petitioners to condone the delay in filing the set aside the *ex-parte* decree was kept pending for a long time by the trial court and the court below has not even numbered the delay petition. The court

below, without giving any reasons, simply rejected the delay petition. He further submitted that the respondent filed the above suit for specific performance of agreement of sale of immoveable property, basing on unregistered and unstamped paper, which is not admissible in evidence. Hence, the impugned order is liable to be set aside by allowing the present the civil revision petition.

4. No counter-affidavit has been filed by the respondent. But the counsel for the respondent contended that there was abnormal delay of 338 days in filing the petition to set aside the *ex-parte* decree and that there are no cogent or convincing reasons from the petitioners explaining the huge delay and the trial court has rightly dismissed the said petition and hence, the revision petition is liable to be dismissed.

5. On 28.3.2013, this court while ordering notice to the respondent, granted interim stay of all further proceedings.

6. Section 5 of the Limitation Act enables the Courts to condone the delay in presentation of the applications beyond the periods of limitation prescribed under the relevant provisions of law, in case satisfactory reasons are furnished by the parties. The approach in the matters of setting aside *ex-parte* decrees has always been to condone the delay as far as possible, if semblance of genuine reasons are forthcoming. The object is to ensure that the parties get adjudication of the matter on merits. Either for condoning the delay or for refusing to condone the delay, the court is under obligation to record reasons.

7. The order impugned in the present revision petition reads as under:

“The objections submitted by Advocate are not tenable. It shows intentionally party kept quit for 338 days in filing the set aside the petition. Hence, petition is rejected.’

8. The trial court even before it is numbered rejected the said petition. As the trial court has not recorded any valid reasons for rejection of the delay petition, the impugned order is liable to be set aside and the matter has to be disposed of afresh.

9. Accordingly, the civil revision petition is allowed setting aside the impugned order and the matter is remanded to the trial court for fresh disposal in accordance with law, within a period of one month from the date of receipt of a copy of this order. No order as to costs. Pending miscellaneous petitions if any in this revision petition shall stand dismissed in consequence.

Date: 03.11.2017
BSS

KONGARA VIJAYA LAKSHMI, J

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Civil Revision Petition No.1198 of 2013



Date: .11.2017

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