

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.1973 of 2017

ORDER:

Heard the learned counsel for the petitioners. None appears for the respondent.

2. This Revision Petition is filed assailing the order dt.21-03-2017 in I.A.No.210 of 2016 in O.S.No.554 of 2008 of the Junior Civil Judge, Bhimadole, West Godavari District, refusing to condone delay of 2398 days to file the petition to set aside the *ex parte* decree.

3. Admittedly there was an *ex parte* decree passed against the petitioners on 12-02-2009 in O.S.No.554 of 2009 by the Principal Junior Civil Judge, Eluru.

4. The respondent filed E.P.No.201 of 2009 under Order 21 Rule 32 CPC for arrest of the petitioners. The petitioners filed E.A.No.871 of 2013 to set aside the *ex parte* decree along with application for condonation of delay.

5. That application was later withdrawn and on 31-08-2015, I.A.No.210 of 2015 was filed to condone delay of 2398 days in seeking to set aside the *ex parte* decree along with application under Order 9 Rule 9 CPC stating that they were not aware of the decree in the suit and their counsel had filed E.A.No.871 of 2013 to set aside the *ex parte* decree by mistake.

6. The respondent opposed the same contending that the delay is inordinate and if the petitioners had come to know about the *ex parte* when they filed E.A.No.871 of 2013, there was no valid reason why they should wait till 31-08-2015 to file the application to set aside the *ex parte* decree under Order 9 Rule 13 CPC and the application for condonation of delay in seeking to set aside the *ex parte* decree. He stated that petitioners were aware of the injunction orders granted in his favour and yet they forcibly and high handedly encroached into the plaint schedule property and built a thatched shed in their property.

7. By order dt.21-03-2017, the Court below dismissed the said application. It held that to set aside the *ex parte* decree, the petitioner should have invoked Order 9 Rule 13 CPC and there was no valid reason why they filed E.A.No.871 of 2013 in E.P.No.201 of 2009 to set aside the *ex parte* decree. It also held that two years after filing of said E.A., the present application has been filed to condone the delay in seeking to set aside the *ex parte* decree. It held that the reasons given by the petitioners were not convincing. Therefore, they are not entitled to seek condonation of delay.

8. I concur with the reasons given by the Court below for dismissing the application for condonation of delay. Since the petitioners were aware of the *ex parte* decree in 2013, they ought to have filed the application for condonation of delay in seeking to set

aside the *ex parte* decree as well as petition to set aside the *ex parte* decree in 2013 itself.

9. Therefore, I am not inclined to interfere with the exercise of jurisdiction by the Court below. I do not find any merit in the Revision Petition.

10. Accordingly, the Civil Revision Petition is dismissed.
No costs.

11. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

Date: 28-04-2017
Kvr

JUSTICE M.S.RAMACHANDRA RAO

