

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.6419 of 2016

and

Civil Revision Petition No.735 of 2017

Common Order:

While the 2nd civil revision petition arises out of an order of the Trial Court dismissing an application to condone the delay of 1,832 days in seeking to set aside the *ex parte* decree, the 1st revision petition arises out of an order passed in the execution proceedings, granting Police Aid.

2. Heard Mr. K.J.V.N. Pundareekakshudu, learned counsel for the petitioners and Mr. P.Prabhakar Rao, learned counsel for the respondents.

3. The respondents herein filed a suit in O.S.No.7 of 2011 for a decree of permanent injunction. The suit was decreed *ex parte* on 24-6-2011.

4. Thereafter, the respondents herein filed execution petition in E.P.No.21 of 2016. In the execution petition, the respondents also filed E.A.No.247 of 2016 seeking Police Aid.

5. It was at that time that the petitioners woke up to file an application to set aside the *ex parte* decree along with an application to condone the delay of 1,832 days. This application to condone the delay was dismissed by the Trial Court by an order dated 21-12-2016.

6. In the meantime, the Executing Court allowed E.A.No.247 of 2016, granting Police Aid to the decree-holders. Therefore, challenging the order of the Executing Court granting

Police Aid, the judgment-debtors came up with C.R.P.No.6419 of 2016. Thereafter, they have come up with C.R.P.No.735 of 2017 challenging the order of the Trial Court dismissing the application for condonation of delay in filing the petition to set aside the *ex parte* decree.

7. Let me take up C.R.P.No.735 of 2017 first. This revision arises out of I.A.No.1048 of 2016 filed under Section 5 of the Limitation Act, 1963. The Affidavit in support of I.A.No.1048 of 2016 comprised of 5 paragraphs. In the 1st paragraph, the petitioners described themselves. In the 2nd paragraph, the petitioners stated the circumstances under which they were set *ex parte*. In the 3rd paragraph, the petitioners dealt with a dispute relating to the Survey number and also the factum of filing of the execution petition. It is only in the 4th paragraph that the petitioners attempted to give an apology of a reason for the enormous delay. Paragraph-4 of the Affidavit in support of the condone delay petition reads as follows:

“I submit that we have got strong case and non attending the court has been taken place with bona fide reasons such as our ignorance, Samaikya Andhra Bunds and our ill-health.”

8. Other than what is contained in para-4 which I have extracted above, nothing else is stated anywhere in the Affidavit in support of the condone delay petition. Therefore, no Court could have condoned such a huge delay of 1,832 days in filing the set aside petition. Hence, C.R.P.No.735 of 2017 is devoid of merits and it is dismissed.

9. Coming to C.R.P.No.6419 of 2016, the grievance of the petitioners is that a decree for permanent injunction has to be executed only in accordance with the procedure prescribed by Order XXI, Rule 32 CPC and that the question of Police Aid does not arise. The petitioners claim that they are in possession of the suit property for over 40 years and that therefore by Police Aid, the respondents cannot take possession.

10. I have carefully considered the above submissions. The contention that the petitioners are in possession, is on the merits. The petitioners have suffered a decree and the decree has attained finality.

11. Various Courts have taken the view that while enforcing the decree of permanent injunction, the Court can order Police Aid. Under Order XXI, Rule 32 CPC the Court can only punish the person violating the order of injunction. The powers of the Executing Court to do complete justice to ensure that a decree is not reduced to a mere paper decree, is beyond any pale of doubt. Therefore, C.R.P.No.6419 of 2016 is also devoid of merits and it is dismissed.

12. Hence, both the civil revision petitions are dismissed. The miscellaneous petitions, if any, pending in these revisions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

03rd March, 2017.
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