

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA
CIVIL REVISION PETITION Nos.976, 977 AND 1102 OF 2017

COMMON ORDER:

C.R.P. No.976 of 2017 is filed challenging the order dated 25.01.2017, in I.A. No.760 of 2016 in O.S. No.5 of 2016, passed by the learned III Additional District and Sessions Judge, Asifabad, dismissing the interlocutory application filed under Order - IX Rule 4 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC'), seeking to restore the suit against dismissal.

2. C.R.P No.977 of 2017 is filed challenging the order dated 25.01.2017 in I.A No.761 of 2016, filed under Section 5 of Limitation Act, 1963, seeking to condone the delay of 2,052 days in filing I.A. No.760 of 2016 in the aforesaid suit.

3. C.R.P. No.1102 of 2017 is filed challenging the order dated 25.01.2017 in I.A. No.800 of 2016, filed under Order - VI Rule - 17 read with Section 151 of CPC, to amend the plaint, in the aforesaid suit.

4. The learned Additional District Judge disposed of all the three interlocutory applications by a common order referred to above.

5. Heard Sri H. Venugopal, learned counsel for the petitioner, and Sri K.V. Bhanu Prasad, learned counsel for respondent Nos.1 to 6, and perused the material on record.

6. Respondent No.7 herein since refused to receive the notice, service is deemed to have completed.

7. For convenience sake, the parties are hereinafter referred to as arrayed in the suit.

8. Substantially, the facts have been that respondent No.7 - defendant No.7 in the suit, was original owner of the plaint schedule property. The petitioner, who is the plaintiff, along with respondent Nos.1 to 6, who are defendant Nos.1 to 6, purchased the suit property admeasuring an extent of Acs.15-26 guntas, for a total consideration of Rs.38,00,000/- from defendant No.7.

9 (a). The plaintiff's case is that he agreed to purchase half of the suit extent. Defendant Nos.1 to 6 are concerned with defendant No.1 viz, M/s. Sri Balaji Associates, have agreed to purchase rest of the share. In that direction, the plaintiff had paid Rs.3,00,000/- towards his share as earnest money and according to him, he gave agreement of sale executed by the defendant No.7 to defendant Nos.1 to 6 with an understanding that they should obtain registered sale deed from defendant No.7 for the total extent, out of which half of the extent should be recorded towards his share. However, defendant Nos.1 to 6 with a cynical motive, obtained sale deed from defendant No.7 excluding the plaintiff and the same constrained him to file the suit seeking to enforce the agreement of sale to the extent of his share in the suit property. Of course, it is his case that he has also got issued

notice prior to institution of the suit to defendant Nos.1 to 6. It is not in dispute that he did not even plead alternative relief for refund of the amount advanced by him under the agreement of sale. The common order under challenge would reflect that despite the Court affording him innumerable chances, he failed to pay process for effecting summons on defendant No.7, and, therefore, his suit was dismissed against him on 21.04.2011.

(b) Later, relevant issues were also settled and trial was over by recording the evidence on behalf of both sides and by the time, the present petitions were filed, the suit was coming up for arguments since about two years prior thereto. It is also forthcoming that witness No.4 on behalf of the plaintiff was also examined as PW.4 pursuant to the order passed by this Court in a Civil Revision Petition and, thereafter, the suit stood posted for arguments. At that stage, the aforesaid three interlocutory applications have been filed.

(c) The learned Additional District Judge observed that no satisfactory reason at all was mentioned in the delay condonation petition in filing the petition for restoration of the suit against defendant No.7 and thereby dismissed I.A. Nos.760 and 761 of 2016.

(d) So far as I.A. No.800 of 2016 is concerned which is filed with a request to permit the plaintiff to amend the plaint, observing that he has not disclosed anything except stating that certain averments ought to be made against defendant No.7 and in the prayer

portion, simply sought the amendment, dismissed it, having considered the resistance offered by defendant Nos.1 to 6 in their counters.

10. The learned District Judge formulated the points. Thereafter, referring to the conduct of the plaintiff that having maintained silence for about two years without making payment of process and allowing the suit to be dismissed against defendant No.7, and thereafter also keeping quite besides not seeking the relief against defendant No.7 and also opining that the claim of the plaintiff was clearly barred by limitation as the applications have been filed in the year December, 2016, and that no explanation at all is forthcoming, dismissed the I.A. Nos.760 and 761 of 2016.

11. The learned Additional District Judge, then referred to the request in I.A. No.800 of 2016 and observed that in the plaint pleadings, except pleading that he is entitled to the relief against defendants Nos.1 to 6 stating that they are duty bound to convey half share to him, nothing else was mentioned. The learned Additional District Judge has also observed that one of the reliefs sought to be introduced is sale deed effected by defendant No.1 in favour of a third party in October, 2016 as null and void and alternative relief of payment of market value on suit property was also being sought to be added by the amendment. So, on the main ground that the claim is barred by limitation and even at best, the alternative relief can be

made only against defendant Nos.1 to 7, rejected the request and dismissed the application, I.A. No.800 of 2016.

12. Challenging the aforesaid common order, these revision petitions have been filed which are being disposed of by this common order.

13. The learned counsel for the plaintiff, no doubt, attempted to convince the Court that interest of justice would demand allowing all three interlocutory applications, contending that the Court below was not right in rejecting the request. His further submission is the ground that the claim made by the plaintiff was barred by limitation is not correct.

14. Thus, mainly on the ground that no prejudice would be caused to defendant Nos.1 to 6, in case, the suit is restored against defendant No.7 and that the plaintiff was under the *bona fide* impression that defendant No.7 remained absent in spite of notice and recently, only he noticed the fact of dismissal of the suit against defendant No.7 and immediately he filed the interlocutory applications. Even on a cursory glance at the grounds agitated, the submission made by the learned counsel for the plaintiff, would expose hollowness and falsity in the stand taken by the plaintiff

15. The fact that the plaintiff has not sought any relief against defendant No.7 is sufficient to belie the stand now taken by him in

asking for restoration of the suit against defendant No.7 and to allow him to introduce the amendment now sought for.

16. When defendant Nos.1 to 6 have filed their written statements, suit was posted for trial, evidence was led by both sides, in which, the defendants' witnesses were subjected to cross-examination and even pursuant to the orders passed by this Court in a revision petition, the plaintiff has examined PW.4 also and thereafter, having failed to commence arguments for about two years, then coming up with these applications, certainly, would reflect his conduct.

17. When no explanation is offered, the direction of substantiating sufficient cause for condoning the delay of 2,052 days in filing I.A. No.760 of 2016, rejection of that application along with I.A. No.761 of 2011 by the learned District Judge, cannot be faulted.

18. Concerning I.A. No.800 of 2016, seeking the relief of amendment to the plaint, when once I.A. Nos.760 and 761 of 2016 were dismissed, invariably, I.A. No.800 of 2016 has to be dismissed without going into the merits. The learned Additional District Judge, probed into merits and arrived at the conclusion that in view of absence of a plea originally seeking the relief against defendant No.7 and even failure of the plaintiff to seek alternative relief and now coming with the application for amendment to plug the loophole would, not only changes nature of the suit but also the right accrued

on account of bar of limitation. The said conclusion arrived at by the learned Additional District Judge certainly, cannot be faulted.

19. Thus, viewed from any angle, there are no merits in these revision petitions to accept the request of the plaintiff.

20. Therefore, all these Civil Revision Petitions are dismissed, at the admission stage itself. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in these revisions shall stand disposed of.

June 21, 2017.
PV

A. SHANKAR NARAYANA, J

