

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.5091 OF 2017

ORDER:

The petitioner is the second defendant in O.S.No.97 of 2004 on the file of the Senior Civil Judge, Gudur. The said suit was filed by the first respondent herein seeking a declaration that the suit schedule property was given to her as part of maintenance and for consequential permanent injunction restraining the defendants from interfering with the same.

The suit schedule property is a terraced room in an extent of 2 1/2 Ankanams bearing Door No.2/1/146 of Bazar Street, Naidupet Mandal, Nellore District. The petitioner herein filed a detailed written statement along with a counter claim on 30.12.2009. He filed I.A.No.107 of 2010 stating that he entrusted the case to the first defendant in the suit, who promised him that he would look after the case on his behalf. The first defendant took his signatures on the Vakalat to engage an Advocate and he enquired with the first defendant several times with regard to the stage of the suit, but on 18.04.2009, the plaintiffs came to the suit schedule property and dispossessed him from the suit schedule property with police force and when the petitioner questioned the plaintiffs, they showed an *ex parte* decree. He applied for a certified copy of the decree dated 11.02.2005. Thereafter, he was attacked with 'jaundice' and was taking private medicines. Ultimately, he filed the present application with a delay of 1781 days to set aside the *ex parte* decree.

A counter affidavit is filed stating that the petitioner herein engaged advocate, but he did not file any Written Statement in time though the petitioner has knowledge about the case. The reasons shown in the applications are false and concocted.

The trial Court by its order dated 26.07.2017 dismissed the application stating that the petitioner herein and the first defendant appeared before the

Court through their counsel and failed to file the written statement and so, they were set *ex parte*. After recording the evidence of the plaintiff, the Court passed an *ex parte* decree on 11.02.2005. The trial Court also observed that it is for the petitioner to defend his case vigilantly and he cannot leave it to the first defendant. He also did not file any evidence to show that he has suffered from Jaundice and he has taken treatment.

I have perused the affidavit filed in support of the application of the petitioner and the Order passed by the trial Court. The affidavit did not disclose any valid grounds for condoning the enormous delay of 1781 days. A copy of the written statement alleged to have been filed on 30.12.2009 was after passing of the decree and it was filed along with the present application. After passing of the *ex parte* decree, execution proceedings also have been taken and the petitioner did not state anything with regard to the said execution proceedings. The plea set up by the petitioner that he entrusted the entire responsibility on the first defendant cannot be believed in the absence of any affidavit from the first defendant. This Court sees no reason to interfere with the Order passed by the trial Court.

The civil revision petition is accordingly dismissed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

A.RAMALINGESWARA RAO, J

09.11.2017

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