

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.1269 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the unsuccessful petitioners/ third parties assailing the orders, dated 28.01.2016, of the learned Principal District Judge, Warangal, passed in I.A.No.1391 of 2015 in ASSR 4032 of 2015 filed under Order 41 Rule 3(A) of the Code of Civil Procedure, 1908, (hereinafter, 'the Code') requesting to condone the delay of 64 days in filing the said unregistered appeal.

2. I have heard the submissions of *Sri A.Prabhakar Rao*, learned counsel for the petitioners and of *Sri K.Subba Rao*, learned counsel appearing for the decree holder/ 1st respondent and the auction purchaser/ 3rd respondent. The 2nd respondent is the judgment debtor. None appeared for the said respondent/ JDr. The said respondent is stated to be not a necessary party.

2.1 The parties in this revision shall hereinafter be referred to as the petitioners, Dhr, auction purchaser and JDr for convenience and clarity.

3. Before proceeding further, it is necessary to refer to the pleadings of the parties.

3.1 The case of the petitioners in support of the request for condonation of delay in preferring the appeal, in brief, is this:

On the dismissal of the execution application in EA No.212 of 2010 in EP No.152 of 2005 in O.S No.448 of 2002, on 10.04.2015, the certified copies of the order of the executing Court passed in the said EA No.212 of 2010 were obtained on 04.05.2015. Since the petitioners were advised that an appeal lies to the High Court, they handed over the file to the counsel at Hyderabad. On 30.07.2015, the said counsel handed over the records to the petitioners and informed them that the appeal has to be preferred before the District Court. Therefore, the appeal was preferred before the District Court on 03.08.2015

along with the application for condonation of delay. The delay had occasioned only for the aforesaid reasons. The petitioners' valuable rights in immovable property are involved in the matter. Hence, a lenient view may be taken and the delay may be condoned.

3.2 Per contra, the case of the DHr and the auction purchaser is that the petitioners are no other than the daughters of the JDr and that they are acting in collusion with the JDr and that the JDr filed E.A.No.106 of 2015 to set aside the order dated 10.06.2015, of the executing Court in E.A.No.133 of 2009 directing delivery of the property and that in the said application, the JDr had stated that his daughters application filed under Order XXI Rule 97 of the Code was dismissed and that the said fact clearly shows the collusion between the JDr and his daughters. The further case of the auction purchaser is that he sought orders for breaking open the locks put on the property and for police aid for smooth delivery of the property and that at that juncture, the appeal was filed with a delay and that therefore, there are no grounds to condone the delay and that the petition is liable to be dismissed.

4. At the hearing, the learned counsel for the petitioners and the learned counsel for the DHr and the auction purchaser reiterated the respective contentions of the parties. The learned counsel for the petitioners would submit that only because of a wrong advice given by a counsel, the petitioners approached the counsel at Hyderabad in May, 2015 and handed over the record for filing an appeal and that the said counsel returned the case records to the petitioners on 30.07.2015 by informing that the appeal lies to the District Court and that immediately thereafter the appeal was preferred with the application for condonation of delay and that the delay is only (64) days and therefore, the lower appellate Court/District Court ought to have condoned the delay. However, the learned counsel for the DHr and the auction purchaser submitted that the petition is filed with bald allegations even without mentioning the name of the counsel who advised them to approach the counsel at Hyderabad

and also the name of the counsel at Hyderabad and that only after the auction purchaser moved applications for breaking open the locks and for grant of police aid, the appeal was preferred and that therefore, the delay was intentional and deliberate and is intended to delay and defeat the just claim of the auction purchaser.

5. I have given detailed and thoughtful consideration to the facts and the submissions.

6. To begin with, it is to be noted that the DHr obtained a decree for money against the JDr and filed E.P.No.152 of 2005 for realization of the decree debt by sale of the immovable property/ RCC building of the judgment debtor, i.e., EP schedule property, which was already attached before judgment, during the pendency of the suit. E.A.57 of 2008 and E.A.58 of 2008 filed by the JDr were dismissed on 31.07.2008 and eventually, the sale was held on 01.08.2008 and was knocked down in favour of the 3rd respondent/ auction purchaser. The auction purchaser deposited the required amounts and the sale was confirmed on 05.09.2008 and a sale certificate was also issued to the auction purchaser on 12.09.2008. While so, the petitioners, who are the daughters of the JDr filed E.A.No.212 of 2010 under Order XXI Rule 97 read with Section 151 of the Code *inter alia* claiming that the petitioners are having a 6/5th share in the RCC building, i.e., the EP schedule property. However, by orders, dated 10.04.2015, the learned II Additional Senior Civil Judge, Warangal dismissed the said E.A.No.212 of 2010 *inter alia* holding that the certified copy of the registered sale deed exhibited as R1 reflects that the JDr was allotted Plot No.20 being the member of Teachers Cooperative Housing Society and that the 1st petitioner-PW1 stated in her evidence that she has no proof to show that the grandfather invested joint family funds for purchasing the Plot and that on the other hand, she had stated that the LIC housing loan amount was discharged by her father/ JDr and that she does not have any proof to show that the EP schedule property is joint family property. Aggrieved thereby, the

petitioners herein/the claim petitioners filed the aforestated unregistered appeal assailing the aforestated orders of the learned Additional Senior Civil Judge passed in E.A.No.212 of 2010. However, as a delay of (64) days had occasioned, the petitioners filed I.A.No.1391 of 2015 for condonation of the said delay in filing the unregistered appeal.

7. In this setting of facts and chronology of events, it is to be first noted that the JDr also filed E.A.No.95 of 2008 under Order XXI Rule 90 read with Section 151 of the Code for setting aside the sale held on 01.08.2008. The executing Court dismissed the said EA on 04.08.2009. The CMA 100 of 2010 preferred by the JDr was dismissed by the learned Additional District Judge on 29.09.2012. Therefore, the JDr preferred C.R.P.No.4015 of 2015 before this Court. The executing Court and the Additional District Court concurrently held that there are no irregularities in conducting the sale on 01.08.2008; and, it is an undisputed fact that the sale was confirmed on 05.09.2008 and that later, a sale certificate was also issued to the auction purchaser. Today, this Court by separate orders made in C.R.P.No.4015 of 2015, dismissed the said revision. The JDr also filed EA 106 of 2015 to set aside the order dated 10.06.2015 in EA No.133 of 2009 filed by the auction purchaser for delivery of the property. The said EA was dismissed by the executing Court, vide orders dated 19.01.2016. Aggrieved thereby, the JDr preferred C.R.P.979 of 2016. Today, this Court by separate orders made in C.R.P.No.979 of 2016, dismissed the said revision. As already noted, in the affidavit filed in support of the petition for condonation of delay, no details of the relevant dates and the names of the counsel are pleaded and bald averments were made. Therefore, the explanation offered for delay bereft of details cannot be considered as a valid explanation or a sufficient cause for condonation of delay. The chronology of events clearly indicate that the petitioners, who are the daughters of the JDr, are acting in collusion with the JDr and that the request of the petitioners is not *bona fide* as rightly held by the Court below. When the Court comes to the conclusion that there is no justification for the delay, the delay shall not be condoned.

8. Viewed thus, this Court finds that there is no merit in the revision and that the revision is liable to be dismissed.

9. In the result, the revision petition is dismissed. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

07th February, 2017
RAR

M. SEETHARAMA MURTI, J

