

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.4635 of 2017

ORDER:

Heard the learned counsel for the petitioners.

2. This Civil Revision Petition is filed under Section 115 CPC challenging the order dt.27-07-2017 in I.A.No.4 of 2017 in O.S.No.85 of 2014 of the Junior Civil Judge, Pakala, Chittoor District.

3. Petitioners are defendants in the suit. The respondent had filed the said suit against the petitioners for permanent injunction restraining the petitioners from interfering with her possession and enjoyment of the plaint schedule property. Since the petitioners did not appear before the Court after receiving summons and after engaging advocate who had also filed vakalat, the Court below set *ex parte* the third petitioner on 10-12-2014 and petitioner Nos.1 and 2 *ex parte* on 07-05-2015. Thereafter, the suit was decreed on 06-08-2015.

4. In January 2017, petitioners filed an application under Order 9 Rule 13 CPC to set aside the *ex parte* decree along with I.A.No.44 of 2017 under Section 5 of the Limitation Act, 1963 to condone delay of 496 days in filing the said petition.

5. In the affidavit filed in support of the said I.A., petitioners contended that they did receive summons from the Court and also filed vakalat, but due to unavoidable circumstances, they

could not consult counsel and could not file Written Statement. It is stated that they made representations to revenue authorities including Revenue Divisional Officer to cancel the patta issued to the respondent, that an endorsement was made to the Tahsildar, Pulicherla they are waiting for cancellation of the said patta; in addition, their grandmother was undergoing cancer treatment in Apollo Hospital at Hyderabad and passed away in 2015; and therefore they could not meet their counsel to ascertain the information about Court proceedings and they came to know about decree only on receipt in the E.P.

6. Counter affidavit was filed by the respondent opposing the same and denying the contentions of the petitioners.

7. By order dt.27-07-2017, the Court below dismissed the said application. It held that the petitioners did not show sufficient cause for condonation of inordinate delay of 496 days. It held that the petitioners did not show what were unavoidable circumstances disabling them to consult their counsel or for filing of the Written Statement; that even if they approached revenue authorities for cancellation of patta issued to the respondent, they still have to contest the suit by filing Written Statement, but they remained *ex parte*, and that they did not show due diligences. It held that though medical records of the petitioners' grandmother were filed, they did not disclose when she was admitted in hospital for cancer treatment and

her discharge summary did not show that she was taking treatment in 2014 when the suit was filed.

8. Assailing the same, this Civil Revision Petition is filed.

9. Learned counsel for the petitioners sought to contend that on the basis of fraudulent documents, the suit was filed by the respondent and grave prejudice will be caused to the petitioners, if the *ex parte* decree is not set aside. He also contended that sufficient cause exists for condonation of delay of 496 days in filing the petition for setting aside the *ex parte* decree.

10. As held by the Court below, petitioners did not disclose what were the unavoidable circumstances disabling them for not filing the Written Statement or consulting their counsel. In today's world, people can communicate on telephone or by letter. It is difficult to believe that all the three petitioners were disabled from communicating with their counsel and from filing Written Statement. Also pendency of any proceeding before revenue authorities cannot be a ground entitling the petitioners to avoid proceeding in the Civil Court. Even assuming for the sake of argument that petitioners' grandmother was sick and she passed away, in the absence of material to show that she was sick during the year 2014 when the suit was filed and when the petitioners received summons, nothing prevented the petitioners from filing Written Statement. It shows that the petitioners

have been negligent in contesting the suit. Therefore, they are not entitled to any indulgence.

11. In this view of the matter, I see no error of jurisdiction in the order passed by the Court below warranting interference by this Court under Section 115 CPC.

12. Accordingly, the Civil Revision Petition is dismissed at the admission stage. No costs.

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

Date: 10-11-2017
kvr

JUSTICE M.S.RAMACHANDRA RAO

