

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4733 of 2017

ORDER:

1) The present Civil Revision Petition is filed under Section 115 of C.P.C. questioning the order dated 26.07.2017, passed in I.A.No.2121 of 2016 in O.S.No.526 of 2013 on the file of the Senior Civil Judge, Ramachandrapuram, wherein an application filed by the petitioner/2nd defendant to condone the delay of 642 days in filing a petition to set aside the exparte decree dated 22.09.2014, was rejected.

2) The facts in issue are as under:

Respondent No.1 herein, who is the plaintiff, filed O.S.No.526 of 2013 for specific performance of the agreement of sale dated 06.01.2002, directing the 1st defendant to execute a regular sale deed in favour of the plaintiff in respect of the schedule property, failing which plaintiff was held entitled to get the decree executed through Court of law and to grant permanent injunction restraining the defendants and their men, agents, privies etc. from ever interfering with the peaceful possession and enjoyment of the plaintiff. An exparte decree came to be passed on 22.09.2014. On coming to know about the same, the petitioner herein, who is defendant No.3 filed I.A.No.2121 of 2016, to condone the delay in

filing an application under Order IX Rule 13 of C.P.C. The averments in the affidavit filed in support of the petition would show that during the month of August, 2014, he was fell sick and was bed ridden and hence due to ill health, he could not move out from the bed for one year. As such, he could not contact his counsel. Hence, he filed an application under Order IX Rule 13 C.P.C. along with an application to condone the delay.

3) After considering the rival submissions made, the trial Court dismissed the said petition. Challenging the same the present revision is filed.

4) Learned counsel for the petitioner mainly submits that the delay in filing the set aside exparte decree petition is neither wilful nor wanton. It is contended that due to ill health only he did not file the application within time.

5) Learned counsel for the first respondent/plaintiff would submit that there is abnormal delay in filing the petition and the petitioner failed to explain day to day delay and also failed to file any proof evidencing that he was bed ridden for a period of one year.

6) A perusal of the plaint would show that the 1st defendant is the close relative of the plaintiff and he is resident of Rajamundry. The husband of the 2nd defendant and 1st defendant are close

friends. The 1st defendant agreed to sell the plaint schedule property for a consideration of Rs.3,00,000/-. Having believed the 1st defendant the plaintiff paid Rs.3,00,000/- on 06.01.2002. Since then the plaintiff is in possession and enjoyment over the schedule property and he has been paying the house tax in the name of the first defendant. As there is no registered sale deed the gram panchayat is collecting house tax in the name of the 1st defendant. Originally, the 1st defendant got the schedule property through a registered partition dated 25.11.1984. Two years back the plaintiff invested Rs.1.00 lakh to replace the old roof and for construction of separate kitchen and other provisions. In the last week of September, 2013, the plaintiff came to know that the 1st defendant with a malafide intention to sell the schedule property to third party and he was making proposals to sell the property taking advantage that the sale agreement is a oral one. When the 1st defendant refused to execute the registered sale deed, the plaintiff got issued a notice calling upon the 1st defendant to execute the registered sale deed. In the reply notice dated 09.11.2013, the 1st defendant mentioned that he had sold away the plaint schedule property in favour of the 2nd defendant on 30.10.2013. It is stated that the 2nd defendant is not entitled to purchase the property as she is having knowledge about the possession of the plaintiff in respect of the plaint schedule

property. In the reply notice itself the 1st defendant admitted that the plaintiff is in possession and enjoyment of the property.

7) The 2nd defendant filed the written statement along with the present application denying the oral agreement of sale dated 06.01.2002 and also payment of sale consideration of Rs.3,00,000/-. It is a cock and bull story to believe that the 1st defendant agreed to execute the sale deed whenever required by the plaintiff. It is stated that the plaintiff is knowledge about the sale negotiations between the 1st defendant and 2nd defendant. In fact the 1st defendant and even plaintiff also informed to the 2nd defendant that the plaintiff was not in a position to purchase the schedule property and promised to pay the rent to the 2nd defendant till the plaintiff vacates the premises. Having faith in the word of the plaintiff, the 2nd defendant got the sale deed executed in her name, hoping that the plaintiff would deliver possession without any difficulty. Having agreed to pay rent to the 2nd defendant after the sale, the plaintiff failed to pay the rent as agreed upon and plaintiff with a malafide intention got filed the suit to have wrongful gain.

8) As seen from the record, an *ex-parte* decree was passed on 22.09.2014 and the petitioner has filed vakalath in E.P.No.269 of 2015 on 25.02.2016. So she had knowledge about the *ex-parte* decree being passed against her in O.S.NO.526 of 2013. She did not choose to file an application to set-aside *ex-parte* decree even

after filing of vakalath in E.P. Five months thereafter, she has filed a petition i.e., on 25.07.2016 to condone the delay of 642 days, in filing the application to set-aside the *ex-parte* decree, and the reason stated in the affidavit is that she had no knowledge about the *ex-parte* decree and two days back only she came to know that the *ex-parte* decree was passed. The said version runs contrary to the E.P. proceedings, wherein she has filed vakalath on 25.02.2016. In the written statement itself, the petitioner admitted that though the plaintiff agreed to pay the rent but failed to pay the same, but no explanation is forthcoming as to why she has not taken any steps against the plaintiff for recovery of rent. As such there are no bonafides in filing the application seeking condonation of the extraordinary delay of 642 days in filing application under Order IX Rule 13 of C.P.C. to set-aside the *ex-parte* decree and the trial court has rightly dismissed the application and there are no grounds warranting interference of this Court.

7) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

Dt:22.12.2017

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