

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.3889 of 2015

ORDER:

This civil revision petition is filed questioning the order, dated 27.08.2015, passed in I.A.No.451 of 2015 in O.S.No.128 of 2011, on the file of the XI Additional District & Sessions Judge, Tenali.

I.A.No.451 of 2015 was filed to condone the delay of 231 days in filing the petition to set aside the *ex parte* decree and the same was allowed by the court below on payment of costs of Rs.2,000/-.

Heard Sri Venkateswarlu Chakkilam, learned counsel for the petitioner and Sri V.Ch.Naidu, learned counsel for the respondents.

Learned counsel for the petitioner draws the attention of this court to the finding of the court below, particularly, to paragraph Nos.12 and 13 of the impugned order. In paragraph No.12, the court below came to the conclusion that the defendants court were not diligent in prosecuting the case. Further, the court below noted the dates on which despite service of notice, the defendants failed to appear and ultimately they were set *ex parte* on 03.06.2014 and thereafter, evidence of PWs 1 and 2 was recorded and the suit was decreed. The lower court, at paragraph No.13, also came to the conclusion that despite having sufficient time and opportunity, the defendants did not choose to prosecute the case. Further, the court below did not find any merit in the contention of the petitioners/defendants that their counsel met with an accident. Despite coming to the conclusion that the defendants did not prosecute the case diligently and that the theory set up by them that their counsel met with an accident has no merit, on the ground of equity, the court below

allowed the application on payment of costs of Rs.2,000/-. Learned counsel for the petitioners relied upon the following three judgments and argued that equity has no place in this situation and that Law of Limitation has to be applied strictly even if it may harshly affect a particular party. Learned counsel relied upon the judgments in *Basawaraj v. Land Acquisition Officer*¹, *P.K.Ramachandran v State of Kerala*² and *D.Vidya Bai v. Anil Kumar R.Kamdar (died per Lrs.)*³ in support of his contention.

In response thereto, the learned counsel for the respondents argued that the order passed by the lower court is a reasoned order. The court below took into consideration the claim of the defendants, which is based on a registered sale deed and as valuable rights in the property are involved, the court below allowed the application on payment of costs. The learned counsel submits that the order passed by the court below is correct.

As argued by the learned counsel for the petitioner, the Law of Limitation may harshly affect a particular party but it has to be applied with all its rigor. When the statute prescribes a time frame, the Courts have no power to extend the period of limitation on “equitable” grounds. The same is reiterated in the judgments of the Apex court, referred to above.

The Court below came to the conclusion that the petitioners, who are defendants in the suit, did not prosecute the case diligently. The court below also came to the conclusion that the reason mentioned in their affidavit, viz., their counsel met with an accident was not proved. In

¹ (2013) 14 SCC 81

² (1997) 7 SCC 556

³ 2012 (1) ALT 405

the light of these findings, this court is of the opinion that the court below did not have any reason to allow the application on the ground of equity. Once the court came to the conclusion that there are no merits in the affidavit to condone the delay, the court below ought to have dismissed the application. When a party is diligent, the court may condone the delay, but where in a case it appears that the party is guilty of protracting the litigation on one ground or the other or negligent or careless in prosecuting the matter, the court should not condone the delay. The court below clearly held that the defendants are not diligent in prosecuting the case. The court clearly held that there are laches on the petitioners' part and that they are negligent. In those circumstances, the court below ought to have dismissed the application.

For all these reasons, this court is of the opinion that the impugned order, dated 27.08.2015, suffers from serious infirmities. Hence, the same is set aside.

The Civil Revision Petition is accordingly allowed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

Date: 05.10.2018
Dsr