

HON'BLE SRI JUSTICE N.BALAYOGI

CIVIL REVISION PETITION Nos.4931, 4939 and 4942 of 2012

COMMON ORDER:

Sri M.R.K.Chakravarthy, learned counsel, reports that he filed Vakalat for the respondent.

2. Since both the counsel for the petitioner and counsel for respondent requested for disposal of the revisions, the Civil Revision Petitions are disposed of by a common order.

CRP.No.4931 of 2012

3. CRP.No.4931 of 2012 is filed questioning the order in I.A.No.1452 of 2012 in I.A.No.2687 of 2010 in O.S.No.302 of 2003 dated 25.07.2012 on the file of II Additional Junior Civil Judge, Tadepalligudem, dismissing the application seeking restoration of I.A.No.2687 of 2010.

CRP.No.4939 of 2012

4. CRP.No.4939 of 2012 is filed questioning the order in I.A.No.1451 of 2012 in I.A.No.2690 of 2010 in O.S.No.302 of 2003 dated 25.07.2012 on the file of II Additional Junior Civil Judge, Tadepalligudem, dismissing the application seeking restoration of I.A.No.2690 of 2010.

CRP.No.4942 of 2012

5. CRP.No.4942 of 2012 is filed questioning the order in I.A.No.1450 of 2012 in I.A.No.2686 of 2010 in O.S.No.302 of 2003 dated 25.07.2012 on the file of II Additional Junior Civil Judge, Tadepalligudem, dismissing the application seeking restoration of I.A.No.2686 of 2010.

6. The contention of the petitioner is that, immediately after dismissal of I.A.Nos.2687, 2690 and 2686 of 2010, I.A.Nos.1452, 1451 and 1450 of 2012 were filed seeking restoration and, on the date, the applications were posted, the counsel could not represent as he was unwell and, as such, the applications were dismissed.

Per contra, counsel for the respondent contended that the petitioner is dragging the suit by filing applications when the suit is posted for arguments. He further contended that the petitioner has not shown sufficient cause for his absence, the date on which the said I.A. was posted for hearing.

7. The record clearly shows that the petitioner filed I.A.No.2686 of 2011 to recall PW.1; I.A.NO.2687 of 2019 to receive documents; and I.A.No.2690 of 2010 to send the documents marked in O.S.No.302 of 2003 which were dismissed on 18.06.2012 as there was no representation for the petitioner. Aggrieved thereagainst, the petitioner filed the impugned applications seeking restoration of I.A.Nos.2686, 2690 and 2687 of 2010 on the ground that the counsel fell ill and could not attend Court on 18.06.2012. The Trial Court dismissed the applications observing that the suit is of the year 2003 and both sides evidence was completed during the pendency of I.A.Nos.2686, 2690 and 2687 of 2010 and, at that stage, the petitioner – plaintiff did not come forward for disposal of these applications. The Trial Court further observed that the petitioner did not come forward even when conditional order

was passed in these applications and, now, they filed these applications stating that the petitioner and her counsel are suffering with ill-health but, in this respect, no piece of document was filed as on 18.06.2012. The Trial Court, recording the finding that the petitioner was playing tactics to drag on the matter, dismissed the Interlocutory Applications.

8. It is a fact that, pending I.A.Nos.2686, 2690 and 2687 of 2010, the evidence of both the plaintiff and respondent was complete and the suit is coming up for arguments on 18.06.2012, on which date, the applications were dismissed. The petitioner filed these applications to recall PW.1, to receive documents and to reopen the suit by recalling PW.1 to mark the agreement of sale. The Trial Court in a suit for injunction filed by the petitioner intended to send the document marked in the suit is agreement of sale in favour of petitioner's father in support of her legal possession. The cause shown by the petitioner for her absence and her counsel's absence was that both fell ill, on which date, the applications were dismissed. It is a fact that the petitioner did not file a piece of paper to show her illness as well as counsel. When the Court is satisfied with the averments in the petition affidavits, it should have considered the applications and allowed the same. The impugned orders of the Trial Court, in I.A.Nos.1452, 1451 and 1450 of 2012, suffer from legal infirmity warranting interference of this Court under Article 227 of the Constitution of India.

9. Accordingly, the Civil Revision Petitions are allowed setting aside the orders dated 25.07.2012 passed in I.A.Nos.1452, 1451 and 1450 of 2012 and the Trial Court is directed to restore the I.A.Nos.2687, 2690 and 2686 of 2010 to file and dispose of them within one month from the date of receipt of a copy of this order.

10. The Trial Court is further directed to dispose of the suit in O.S.No.302 of 2003 as expeditiously as possible since it is of the year 2003.

11. Miscellaneous petitions, if any, pending, shall stand closed.

Dt:28.11.2018
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N.BALAYOGI,J