

THE HON'BLE SRI JUSTICE N.BALAYOGI

C.R.P. Nos.3671 and 3694 of 2016

COMMON ORDER :

C.R.P. No.3671 of 2016 :

This petition arises against the order dated 13.6.2016 in I.A.No.907 of 2012 in O.S. No.74 of 2011 passed by the Principal Junior Civil Judge, Rayachoti, allowing the petition by condoning the delay of 343 days in representing the application under Order 9 Rule 13 C.P.C. on payment of costs of Rs.500/- payable to the plaintiff.

C.R.P. No.3694 of 2016 :

This petition arises against the order and decree dated 13.6.2016 in I.A. No.12 of 2013 in O.S.No.74 of 2011 on the file of the Principal Junior Civil Judge, Rayachoti, condoning the delay of 400 days in filing the application under Order 9 Rule 13 C.P.C. on payment of costs of Rs.500/- payable to the plaintiff.

2. The contention of the petitioner/1st respondent/plaintiff in both Civil Revision Petitions is that the trial Court erred in allowing the applications even though respondents 1 to 3 herein have not assigned any reason as to the delay in representing the petition under Order 9 Rule 13 C.P.C. The respondents have to explain the reasons for which delay has occurred on day to day basis. The respondents are well aware of the pendency of the suit as well as passing of the decree in the year 2011. It is further contended that the trial Court has not given any reasonable

opportunity to the petitioner herein to advance his arguments and passed the orders without looking into the record.

3. It is further contended that the trial Court had not considered the fact that E.P. No.25 of 2012 under Order 21 Rule 32 C.P.C. is pending before the Court for enquiry and at the stage of cross-examination, delay occurred due to respondents. Earlier, I.A.No.907 of 2012 was dismissed for default on 7.8.2015 and the 1st respondent – Commissioner filed petition in I.A. No.825 of 2015 under Order 9 Rule 9 C.P.C. to restore the same and the same was allowed by the Court below on 18.4.2016 without even affording an opportunity to the petitioner herein. The orders of the trial Court are suffering from legal infirmities warranting interference.

4. *Per contra*, the contention of respondents 1 to 3 in both C.R.Ps. is that the petitioner herein subsequent to decree, filed E.P.No.25 of 2011 under Order 21, Rule 32 read with Section 241 C.P.C. against the J.Drs. for arrest and detention in prison.

5. The respondents herein explained the delay properly and the delay is neither wilful nor wanton and there are no laches on their part. They have got sufficient grounds to prove their case. To substantiate the case, they have filed written statement along with the petition.

6. Now the point that arises for determination is :

“Whether the impugned orders suffer from legal infirmities warranting interference in C.R.Ps.”

7. A perusal of the order dated 13.6.2016 in I.A.No.12 of 2013 in O.S.No.74 of 2011 and the material on record goes to suggest that the petitioner herein filed O.S.No.74 of 2011 for permanent injunction against respondents 1 to 3 herein. The 1st respondent – District Collector having received summons appeared through the Government Pleader. The property in dispute in O.S.No.74 of 2011 is an extent of Ac.0.28 cents in S.No.784/1 which is claimed to be Government's land, as the same was acquired by paying compensation to the original owners.

8. According to the Municipal Commissioner, the records of the Panchayat, Rayachoti were burnt into ashes in the agitation took place in the year 1984. Therefore, they requested time to trace out the documents pertaining to the suit schedule property. Subsequently, the then Tahsildar, was transferred and he has no knowledge of the suit. Due to pressure of work, the Tahsildar's office, Rayachoti did not bring these facts pertaining to the suit. Therefore, there is the delay in filing the application under Order 9 Rule 13 C.P.C. and also application to represent the delay.

9. As per the docket orders in O.S.No.74 of 2011, as the defence failed to appear before the Court, they were set ex parte. The respondent – District Collector, who appeared through Government Pleader could not file the written statement having been granted time from time to time and even though other respondents were given opportunity, they could not file written statement within time, because the records were burnt into ashes and they had to take more time to trace

out documents pertaining to the suit schedule property and more so, in the meanwhile, the Tahsildar was transferred and due to pressure of work, the Superintendent, Tahsildar Office did not bring the facts to respondents. Accordingly, there was delay.

10. In the facts and circumstances discussed above, I find that the cause shown for the delay in both applications is due to burning of the panchayat records of Rayachoti into ashes in the agitation took place in the year 1984 and because of that they had to take much time to trace out the records pertaining to the property concerned in O.S.No.74 of 2011. In the meanwhile, due to transfer of the Tahsildar, the then Superintendent of Tahsildar Office could not bring those facts to the notice of respondents/petitioners, thereby the delay occurred. Since the property involved is immovable in this case and the trial Court, having considered the material available on record, came to the right conclusion that the delay is neither wilful nor wanton and by condoning such delay, no prejudice would be caused to respondents herein.

11. To substantiate the cause, petitioners therein also filed written statements along with petitions for condoning the delay under Order 9 Rule 13 C.P.C.

12. In the facts and circumstances discussed above and findings therein, I am of the considered view that the trial Court well considered, appreciated and marshalled the facts and after fully hearing the arguments of both sides, and considering petition affidavits and counters, came to the right conclusion that the petitioners therein shown sufficient

cause for the delay and more particularly delay of 343 days and 400 days respectively and allowed petitions by imposing costs.

13. The orders of the trial Court in I.A.No.907 of 2012 and I.A. No.12 of 2013 in O.S.No.74 of 2011 are legal, valid and do not suffer from any legal infirmity warranting interference.

14. In the result, C.R.P. No.3671 of 2016 is dismissed while confirming the order dated 13.6.2016 in I.A. No.907 of 2012 in O.S. No.74 of 2011 on the file of the Principal Junior Civil Judge, Rayachoty.

15. Similarly, C.R.P. No.3694 of 2016 is dismissed while confirming the order dated 13.6.2016 in I.A. No.12 of 2013 in O.S. No.74 of 2011 on the file of the Principal Junior Civil Judge, Rayachoty.

16. But, however, both parties shall bear their own costs in both Civil Revision Petitions.

17. Consequently, miscellaneous petitions pending, if any, in these revisions shall stand closed.

JUSTICE N.BALAYOGI

27th April, 2018

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