

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.2040 of 2018

ORDER:

Aggrieved by the order dated 07.02.2018 in I.A.No.161 of 2015 in O.S.No.79 of 2011 passed by learned Senior Civil Judge, Nagarkurnool dismissing the petition filed by the petitioners/D2 and D3 under Section 5 of Limitation Act to condone the delay of 52 days in filing the petition under Order IX Rule 13 CPC seeking to set aside the decree in O.S.No.79 of 2011 dated 19.01.2015, the instant CRP is filed.

2) The 1st respondent/plaintiff filed O.S.No.79 of 2011 for declaration, delivery of possession and alternatively for specific performance of agreement of sale executed in his favour by 2nd respondent/D1 and also for permanent injunction against the petitioners/D2 and D3. The petitioners/D2 and D3 filed the written statement and contested the suit. When the matter came up for cross-examination of PW1, they failed to cross-examine him and hence the trial Court was pleased to treat cross-examination as nil and closed the evidence and delivered the judgment and decreed the suit. The 1st respondent/plaintiff filed E.P. At that stage, petitioners/D2 and D3 filed the petition under Order IX Rule 13 CPC to set aside the decree on the plea that the same is an ex-parte decree. Since there was a delay of 52 days in filing the said petition, they filed I.A.No.161 of 2015 to condone the delay. The reason shown by them for delay was due to the fact that their counsel did not inform about the proceedings particularly about the

stage of cross-examination of PW1 and therefore they could not take steps for conducting cross-examination of PW1. The 1st respondent/plaintiff opposed the said petition contending that when the petitioners/D2 and D3 failed to cross-examine PW1, the Court was pleased to note the cross-examination as nil and posted the matter for defendants evidence and since defendants took several adjournments, the Court was pleased to close defendants' evidence and after hearing the arguments posted the matter for judgment on 01.08.2014 and at that stage the petitioners/D2 and D3 filed the petition on 31.07.2014 to re-open the case and permit them to cross-examine PW1 and the Court was pleased to allow the petition on 17.09.2014 on costs of Rs.500/- and posted the matter on 26.09.2014 for cross-examination of PW1 and as such the case was again posted to 15.10.2014 and as the defendants failed to attend the Court to cross-examine PW1, the Court again treated the cross-examination of PW1 as nil and posted the matter for judgment on 29.10.2014 and knowing the same petitioners filed another application to reopen the matter but the Court dismissed the said application and passed the judgment. In view of the same, there are no merits in the petitioners' case.

3) The trial Court ultimately dismissed the application on the observation that the petitioners failed to participate in proceedings of the suit in spite of giving sufficient time and opportunity but they have simply thrown burden on the advocate. Hence, the CRP.

4) Heard.

5) The submission of learned counsel for petitioners is that even prior to the suit there was exchange of notices between the parties with regard to suit property which would show that petitioners have been fighting tooth and nail to protect the suit property. The claim of plaintiff is that he purchased 2 acres of land in Sy.No.291 from D1 and the said defendant in turn purchased the land from the father of petitioners/D2 and D3 is palpably false because the father of petitioners had no right to convey the land to D1 and consequently D1 had no right to execute the agreement to sell in favour of plaintiff. Thus, the valuable rights of the petitioners are at stake in the suit. They promptly appeared and filed the written statement also. However, in view of the fact that their counsel did not inform them about the proceedings of the suit they could not participate at the crucial stage. Ultimately ex-parte decree was passed and they came to know about the same only after receiving notices in execution. Learned counsel would thus pray to allow the petition and condone the delay.

6) While opposing the petition, learned counsel for 1st respondent/plaintiff would argue that the trial Court gave number of opportunities to the petitioners to cross-examine PW1, but they wantonly failed to do so and ultimately the trial Court closed the evidence and passed the judgment and there are no merits in the case of the petitioners.

7) The point for determination is:

“Whether petitioners could show sufficient cause to condone the delay of 52 days?”

8) **POINT:** As can be seen from the record, there was exchange of notices between the parties prior to the suit and after filing the suit the petitioners/D2 and D3 appeared and filed their written statement. To that extent their submission is correct. Then, with regard to their failure to cross-examine and not filing an application within time to set aside the decree etc. are concerned, their submission is that they are not properly informed by their counsel and hence they could not take steps in time. Having regard to their past conduct, there is nothing on record to disbelieve their submission. As rightly submitted by learned counsel for petitioners, valuable rights of the parties are at stake in the suit and therefore in the interest of justice opportunity is accorded to them, this Court is of the view the petitioners would submit sufficient cause for delay.

9) In the result, this petition is allowed by setting aside the order dated 07.02.2018 in I.A.No.161 of 2015 in O.S.No.79 of 2011 and consequently I.A.No.161 of 2015 is allowed and delay of 52 days is condoned.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 27.04.2018
Murthy