

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.3047 of 2018

ORDER:

Heard the learned counsel for the petitioners.

2. This Civil Revision Petition is filed assailing the order dt.07-02-2018 in I.A.No.198 of 2017 in O.S.No.81 of 2015 of the Principal Civil Judge, Srikalahasthi.

3. Petitioners are defendants in the suit. The said suit was filed by the respondent for declaration of title and recovery of possession. Though the petitioners received summons in the suit and engaged an advocate, they did not file Written Statement stating that the village elders were trying to settle the dispute.

4. They were set *ex parte* and *ex parte* decree was passed on 30-10-2015. They filed I.A. under Order 9 rule 13 CPC to set aside *ex parte* decree and I.A.No.198 of 2017 to condone the delay of 428 days in filing application to set aside the *ex parte* decree.

5. In the affidavit in support of application for condonation of delay, it is stated that the village elders advised petitioners not to file any petitions to set aside the *ex parte* decree and after compromise is arrived at, petitions can be filed to set aside the *ex parte* decree as well as to record the compromise. They contend that ultimately compromise could not be arrived at and so these two applications are filed.

6. The respondent filed a counter affidavit denying that there was any mediation between the petitioners and the respondent at any time even after passing of the decree. She contended that these allegations are only invented by the petitioners for the purpose of filing the applications. She also stated that the injunction order granted in her favour was violated by the petitioners. She pointed out that no proper explanation was given to condone delay.

7. By order dt.07-02-2018, the Court below dismissed the said application for condonation of delay. It held that no grounds were made out to believe the version of the petitioners and the story set up by the petitioners was totally unbelievable.

8. Assailing the same, this Civil Revision Petition is filed.

9. Learned counsel for the petitioners contended that if the delay in filing the application to set aside the *ex parte* decree is not allowed, irreparable loss will be caused to the petitioners.

10. He did not dispute that the petitioners had received summons in the suit and even engaged as advocate, but did not take any interest in the suit proceedings thereafter. Though they pleaded that there is mediation by the village elders, no affidavit or evidence of those village elders is adduced before the Court below, particularly, when the respondent denied that there is any such mediation.

11. In my considered opinion, the delay in filing the application to set aside the *ex parte* decree of 428 days is inordinate

and the petitioners cannot sleep over their rights in this manner to the prejudice of the respondents. I find no merit in the Civil Revision Petition.

12. Accordingly, the Civil Revision Petition is dismissed.
No costs.

13. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 13-07-2018
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