

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.3315 of 2018

ORDER:

This Civil Revision Petition at the instance of the petitioner/plaintiff is filed against the order dated 7.5.2018 in I.A.No. 188 of 2018 in O.S.No. 103 of 2015 passed by the Principal Junior Civil Judge, Miryalguda allowing the petition filed by the respondents/defendants under Section 5 of Limitation Act seeking condonation of delay of 887 days in filing the petition under Order 9 Rule 13 CPC.

2. Plaintiff filed O.S.No. 103 of 2015 for perpetual injunction decree against defendants. When the matter was posted for appearance of the defendants, they did not appear and therefore, they were set ex-parte and an ex-parte order was passed. Therefore, the defendants filed a petition to set aside the ex-parte decree, as there was a delay of 887 days in filing the said petition, I.A.No. 188 of 2018 was filed under Section 5 of Limitation Act, to condone the said delay. The reasons shown for delay was that the plaintiff conducted panchayat before elders for resolving the dispute and elders have compromised the dispute and advised the plaintiff to withdraw the suit and the plaintiff promised to withdraw the suit, he did not do so, but believing the words of the plaintiff, defendants have not pursued the case and in the meanwhile on 28.9.2015 an ex-parte decree was passed against them. The defendants were not aware of the passing of ex-parte decree. It is only before filing the

application, they came to know about the passing of ex-parte decree, and hence, there was a delay of 887 days, which was neither wanton nor willful.

3. The plaintiff opposed the said petition.

4. The trial Court observed that on perusal of the record it revealed that on receipt of the notice in I.A.No. 224 of 2015 in O.S.No. 103 of 2015 on 5.6.2015, first defendant appeared before the Court and represented that some compromise talks were going on and the said representation was recorded by the Court. Thus, the trial Court observed that the version of the defendants that some compromise talks were going on before the elders during the relevant period and basing on the talks, he did not pursue the matter is believable one. Accordingly, the trial Court condoned the delay on payment of costs of Rs. 2,000/- to the plaintiff. Aggrieved the instant Civil Revision Petition is filed.

5. Notice was ordered to respondents but none appeared.

6. Heard learned counsel for petitioner.

7. Learned counsel for petitioner opposing the order impugned would argue in vehemence that defendants have not submitted sufficient cause to condone the huge delay of 887 days. However, the trial Court allowed the petition on payment of costs. He would further submit that after obtaining decree in O.S.No. 103 of 2015, the petitioner/plaintiff filed E.P.No. 70 of 2017 and the defendants/JDRs appeared through their counsel on 18.12.2017 and four months thereafter i.e., in April 2018, they filed the petition to set aside the

ex-parte decree and along with it they filed I.A.No. 188 of 2018, to condone the delay of 887 days. He would argue that the defendants took four months time, after knowing about the passing of the ex-parte decree, to file the I.A.No. 188 of 2018, which shows they slumbered over the matter. He thus prayed to allow the CRP and set aside the impugned order.

8. *Whether there are any merits in this Civil Revision Petition to allow?*

POINT:

9. As can be seen from the impugned order, the trial Court condoned the delay of 887 days on payment of costs on the main grounds that the Court record manifested that the defendants made a representation before the Court that compromise talks were going on between the parties and the Court observed that the said record supports the version of the petitioners/defendants that in view of the matter pending before the elders for compromise, the defendants did not pursue the matter in the Court. On that observation and also to give an opportunity to the defendants to file the written statement and contest the suit, it allowed the petition.

10. It is true that the defendants put up their appearance in EP No. 70 of 2017 on 18.12.2017 as per the docket order dated 18.12.2017, a copy of which is filed by the petitioner/plaintiff. Four months thereafter, the defendants have filed I.A.No. 188 of 2018 to condone the delay of 887 days in filing the petition under Order 9 Rule 13 CPC, therefore, admittedly, there is a delay on their part. However, what is to be taken into consideration is that the earlier part was

occurred not wantonly but because the compromise talks were proceeding before the elders. It appears the defendants did not pursue the matter in Court because compromise negotiations were pending before the elders. The trial Court was convinced on that ground and condoned the delay. It is true, after appearing in EP also, the defendants caused delay in filing petition. However, what is to be noted is that it is a suit for perpetual injunction and valuable rights of both the parties are at stake. Therefore, it is not apposite to decide the matter ex-parte.

11. Considering all these facts and in the interest of justice, this Court is of the view that the impugned order need not be set aside.

12. In the result, the Civil Revision Petition is dismissed.

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

Date: 25.07.2018
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U.DURGA PRASAD RAO, J