

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.695 of 2014

ORDER:

This civil revision petition is filed questioning the order, dated 07.02.2014, passed in I.A.No.144 of 2013 in CTA.SR.No.486 of 2013, by the Chairperson, the A.P.Cooperative Tribunal at Hyderabad.

The said application is filed before the A.P.Cooperative Tribunal (for short "the Tribunal") under Section 76(3) of the A.P.Cooperative Societies Act, 1964 for condoning the delay of 1316 days in filing the appeal, against the impugned order, dated 12.08.2009, passed in CP No.5 of 2005. The deponent in the affidavit clearly stated that the order, dated 12.08.2009, has not been served upon him and that he was given a copy of the order on 27.05.2013 when he approached the Tribunal and then he came to know about the auction that is fixed.

After hearing both the petitioner and the respondents, the Tribunal dismissed the application stating that the delay is not satisfactorily explained. This order is now questioned in the present revision petition.

This court has heard Sri C.Kumar, learned counsel for the petitioner and Sri N.Rajeswararao, learned counsel for the respondents.

The essential contest is between the petitioner and respondents Nos.1 and 3 in this matter. This court on 27.11.2018 felt that by hearing the petitioner and respondents Nos.2 and 3, the matter can be disposed of. Accordingly, both the learned counsel argued the matter.

The essential contest of the revision petitioner is that under Section 76 (3) of the A.P.Cooperative Societies Act, 1964, the period of limitation would only commence from the date of communication of the order. The learned counsel points out that the language used in the sub-section (3) is very clear and it states that the appeal should be preferred within 60 days

from the date of the communication of the decision. In the case on hand, the learned counsel submits that the order, dated 12.08.2009, was not communicated at all to the revision petitioner. He points out that in the affidavit the revision petitioner has clearly stated that a copy of the order was furnished only on 27.05.2013. Despite the clear and categorical assertion, respondent No.1 did not produce any document or evidence that the order was actually served on the revision petitioner. Therefore, he states that the limitation will not begin to run at all and that the application has been filed as a measure of abundant caution.

The learned counsel also relies upon a decision of the learned single Judge of this court in Civil Revision Petition No.1400 of 1972, which was decided on 08.11.1973. Examining the provisions of Section 76 (3) of the A.P.Cooperative Societies Act, 1964, the learned single Judge held that the period of limitation will not commence unless and until the order is actually communicated. The learned single Judge notices that in view of the language used in the sub-section (3), limitation will begin to run or commence only from the date when the order is communicated to the opposite party. Therefore, the learned counsel submits that the Tribunal committed an error in passing the impugned order and that it did not verify nor did respondent No.1 prove that the order was actually served on the petitioner.

In reply thereto, the learned counsel for the respondents argues that the appeal itself is not maintainable. He draws the attention of this court to Rule 52 and argues that only a civil suit has to be filed when there is any claim against the property. It is also his contention that the delay is not satisfactorily explained.

This court at this stage of the matter is not inclined to pronounce on merits and demerits of the matter and whether a civil suit alone is

remedy or not. The matter is to be decided by the lower court. For the present, the short and simple point that arises for consideration is whether the application for condonation of delay should have been allowed or not.

This court finds sufficient strength in the submissions of the learned counsel for the petitioner that in the absence of any proof that the order, dated 12.08.2009 was actually served on the petitioner, the limitation will not commence nor will the time begin to run. Respondent No.1 should have been called upon to prove this issue, particularly, when he appeared and contested the matter in the Tribunal. In the absence of any proof of actual service of the order dated 12.08.2009 on the revision petitioner, this court is of the opinion that the limitation will not begin to run.

Therefore, this civil revision petition is allowed and the impugned order, dated 07.02.2014 is set aside. The matter is remanded to the A.P.Cooperative Tribunal at Hyderabad to once again conduct a *de novo* enquiry, noting the law on the subject that the limitation will only commence from the date of actual service of the order, as per the provisions of the Act and the decision referred to above. The lower court is directed to dispose of the matter within a period of one month from the date of receipt of a copy of this order. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

Date: 11.12.2018
Dsr