

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.3983 of 2018

ORDER:

The order dated 22.03.2018 passed in I.A.No.26 of 2015 in I.A.No.82 of 2012 in O.S.No.295 of 2007 by the I Additional Senior Civil Judge (Fast Track Court) at Mahabubnagar, is challenged before this Court. By the order impugned, the learned Senior Civil Judge has allowed the delay condonation petition I.A.No.26 of 2015 by imposing costs of Rs.1,000/-, thereby condoning the delay of 465 days occasioned in seeking revival of restoration petition I.A.No.82 of 2012 that was dismissed for default.

2. Brief facts of the case are that the respondent herein/plaintiff filed O.S.No.295 of 2007 before the trial Court for declaration of title and recovery of possession of suit schedule property. Allegedly the counsel for the plaintiff before the trial Court was not diligent enough in prosecuting the case which resulted in dismissal of the suit for default. Thereafter, seeking restoration of the suit, a restoration application i.e. I.A.No.82 of 2012 was filed with a delay of 683 days, and the said restoration application was also dismissed for default. Seeking revival of the restoration application I.A.No.82 of 2012, another application i.e., I.A.No.26 of 2015 came to be filed, this time, with a delay of 465 days. The learned Senior Civil Judge, by the impugned order allowed the application I.A.No.26 of 2015, by imposing costs of Rs.1,000/- on the plaintiff. Aggrieved by the same, the defendant is before this Court with this revision petition.

3. Heard the learned counsel for petitioner/defendant, and also the learned counsel for respondent/plaintiff.

4. It is the contention of the learned counsel for the petitioner that the petitioner is being put to unnecessary harassment from 2007 onwards and there

is gross negligence on the part of the respondent in prosecuting the suit O.S.No.295 of 2007. The suit came to be filed seeking declaration of his alleged rights with respect to Ac.11-00 of land in the year 2007 and from that day onwards, the plaintiff was not diligent in prosecuting the suit. As a result, the suit came to be dismissed for default on 22.10.2010. After two years, in October, 2012, a restoration application I.A.No.82 of 2012 was filed, however, the respondent did not take any steps for prosecuting the same diligently, in the result, even the restoration application also came to be dismissed for default on 06.12.2013. Learned counsel would also submit that I.A.No.82 of 2012 itself came to be filed with a delay of 683 days seeking restoration of the suit O.S.No.295 of 2007. And when the restoration petition was dismissed for default on 06.12.2013, the respondent filed I.A.No.26 of 2015, that too, with a delay of 465 days seeking restoration of the I.A.No.82 of 2012. Learned counsel would assert that the learned Senior Civil Judge had taken the delay condonation petition casually and failed to correctly appreciate the principle that every day delay is required to be explained by the respondent inasmuch as there is gross negligence on the part of the respondent in prosecuting the restoration petition; and merely by imposing costs of Rs.1,000/-, the learned Senior Civil Judge has condoned the delay of 465 days and therefore, the same is required to be interfered with.

5. On the other hand, learned counsel for the respondent submits that the trial Court, having taken into consideration of the factum of the suit having been filed for declaration of title with respect to valuable property, exercised discretion to condone the delay on payment of costs of Rs.1,000/- and further the trial Court had found that the delay was mainly caused on account of laches on the part of the previous counsel who was representing the plaintiff in the suit, as he was not diligent enough in prosecuting the case.

6. It is a case where the costs of Rs.1,000/- imposed by the Court below are grossly undervalued as the petitioner was made to suffer from 06.12.2013 onwards with respect to the subject petition. It may also be noted that the petition for condonation of delay of 465 days is of the year 2015, and no efforts seems to have been made by either of the parties to get the petition disposed of, with the result, the suit was dragged on for a total period of 12 years.

7. Having regard to the respective submissions, and taking into consideration of the plea of the learned counsel for the respondent/plaintiff to take a lenient view so as to ensure the adjudication of suit proceedings, and to put quietus to the issue, the delay of 465 days is condoned accepting the plea of the respondent's counsel, however, by imposing costs of Rs.15,000/- in place of Rs.1,000/-, which would be adequate and justified to condone the delay of 465 days pleaded in the delay condonation petition.

8. Therefore, the costs Rs.1,000/- imposed by the trial Court in I.A.No.26 of 2015 is modified to Rs.15,000/-, with a direction to the respondent/plaintiff to pay the same to the petitioner/defendant in the trial Court within a period of ten days from today. On such payment, the learned Senior Civil Judge is directed to take up I.A.No.82 of 2012 and pass appropriate orders in accordance with law.

9. The civil revision petition stands disposed of accordingly with the above directions. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE CHALLA KODANDA RAM

17th December, 2018

Note: Issue C.C. by 19.12.2018
B/o KSM

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KSM