

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

CIVIL REVISION PETITION Nos.1345 & 1349 of 2015

COMMON ORDER:

These two civil revision petitions are filed questioning the orders, dated 03.03.2015, passed in I.A.Nos.93 and 94 of 2015 in O.S.No.311 of 2011, by the Principal Junior Civil Judge, Vizianagaram.

Both these matters are taken up for hearing together. This court has heard Sri T.Nageswararao, learned counsel for the revision petitioner and Smt.T.V.Sridevi, learned counsel appearing for the respondent.

Sri T.Nageswararao, learned counsel, commenced his arguments in CRP No.1349 of 2015, which is filed against the orders passed in I.A.No.94 of 2015. This application was filed by the revision petitioner to set aside the orders passed by the court below on 29.01.2015, whereby the evidence of the revision petitioner was eschewed. The learned counsel submits that the petitioner was not present on 29.01.2015 because he expected that the court would pass orders on the admissibility of a document that was objected to. The learned counsel also submits that on the said date, the petitioner could not attend the court as there was funeral function connected to his sister. In addition, the learned counsel also submits that due to Hudud cyclone, agitations etc., his client could not attend the court. He draws the attention of this court to paragraph No.6 of the revision petition. The learned counsel submits that under Section 151 CPC the court has inherent power to do justice and in order to prevent multiplicity of proceedings etc., the impugned order should be recalled. He also states that the order was passed without any application of mind.

In reply thereto, the learned counsel for the respondent argues that the revision petitioner filed his evidence in chief on 09.12.2013, he was examined further on 24.02.2014 and Exs.B1 to B13 were marked on that date. Objection as to the admissibility of document was raised. The case was adjourned to 26.02.2014. Thereafter, as per the counter, the revision petitioner was continuously absent for 24 adjournments. The learned counsel submits that in view the prolonged and deliberate absence of the petitioner, the lower court passed the impugned order. In addition, she also submits that the grounds that are now sought to be presented before this court that Hudud Cyclone, agitations etc., are not actually spelt out in the affidavit filed in support of the application in I.A.No.94/2015 for recalling the order. The case of the respondent is that the deliberate absence of the revision petitioner for 24 adjournments is not explained and that therefore, according to the learned counsel, the revision petitioner does not deserve any sympathy.

This court, after hearing both the learned counsel, notices that the contentions about the Hudud Cyclone, agitations etc., are not actually raised in the application filed in the lower court. This court also notices that the affidavit merely deals with what transpired on 26.02.2014 without in any way mentioning or stating what transpired in between December, 2013 till 22.01.2015. The contention of the learned counsel for the respondent that the matter was adjourned for 24 times and the petitioner did not appear is not at all explained anywhere in the affidavit. The events between 2013 to 2015 are conspicuously absent in the affidavit that is filed.

This court no doubt enjoys the inherent power for doing justice, but by exercising the said power, it should see that injustice should not be

caused to the other side. It is also pertinent to note that there was an order passed by this court whereby the lower court was directed to dispose of the suit within six months. This order was passed in June, 2012. This fact is also not disputed. The conduct of the petitioner who was absent for 24 adjournments does not deserve sympathy. This court is of the opinion that recalling such witness, who was absent for 24 adjournments, more so, without any valid reason or explanation, is not correct. In these circumstances, this court, after examining the conduct of the petitioner, is of the opinion that the lower court did not commit any error.

The decision and the affidavit filed in support of the application against which CRP No.1345 of 2015 is filed are also to the same effect. Similar arguments were advanced by both the counsel. In the matters of this nature, this court is of the opinion that a liberal view cannot be taken. The conduct of the petitioner disentitles him from any indulgence of this court.

This court is of the opinion that there are absolutely no merits in these two revision petitions. This court finds no reason to interfere with the orders passed by the lower court.

Accordingly, these two civil revision petitions are dismissed. In the circumstances, no costs.

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

D.V.S.S.SOMAYAJULU,J

Date: 30.11.2018
Dsr