

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.4205 OF 2018

ORDER:

Heard Mr.Venkateshwar Varanasi and the learned Government Pleader for Arbitration.

The plaintiff in O.S.No.72 of 2009 is the revision petitioner. On 01.05.2009, O.S. No.72 of 2009 was filed for specific performance /mandatory injunction for registering the sale deed dated 18.08.2006. The gist of revision petitioner's case is that respondent No.1 after entire procedure for execution and registration was completed and steps were also taken by paying registration fee, stamp duty etc. did not turn up for registration. Hence, the suit.

On 17.11.2015, the suit was dismissed for default.

The petitioner filed I.A.No.109 of 2017 under Section 5 of the Limitation Act praying for condoning 55 days delay in filing an application to set aside the default order dated 17.11.2015. The reasons stated in the affidavit are that the revision petitioner was suffering from typhoid and therefore was immobilized either to meet counsel or take timely steps. Therefore, by referring to health grounds the application is filed for condoning the delay of 55 days.

Mr.Venkateshwar Varanasi contends that the revision petitioner seeks condonation of marginal delay of 55 days and the trial Court ought not to have put the revision petitioner to strict averment and proof. According to him, the revision petitioner since was let down by typhoid the steps could not be taken. He further contends that this Court may exercise its discretion to condone the

delay and direct the suit to be disposed of as expeditiously as possible and that the revision petitioner would extend all possible help and cooperation. He finally contends that the trial Court was more influenced by the past conduct of the revision petitioner than appreciating the events from 17.11.2015 till the date of filing the application and prays to set aside the order under revision.

The learned Government Pleader submits that the contest on fact is between the revision petitioner and the 1st respondent. Keeping in view the nature of reliefs in O.S.No.72 of 2009, the District Registrar of Assurances and Sub Registrar are impleaded as proper parties. To assist the Court, he makes two submissions, firstly, that the revision petitioner could not inspire the confidence of the Court that on a solitary instance, the petitioner could not be present when the evidence was to be let in. Secondly, this Court unless is satisfied that sufficient cause, though not with mathematical exactness, at least reasonable and acceptable averment is made and supported by evidence, cannot as a matter of course exercise its discretion, set aside order dated 29.03.2018. He submits that this Court examines the legality in the order dated 29.03.2018 and thereafter verifies the details furnished by the revision petitioner. In the case on hand, both fail the test of limited scrutiny. He prays for dismissing the CRP.

I have perused the record and noted the submissions. Prima facie this Court is of the view that the petitioner not only conducted the litigation with complacency, but even after the default order is passed, did not furnish the details. Even if any detail is furnished, it does not convince the Court that it was because of that reason,

the petitioner was prevented from attending the Court on 17.11.2015 or adducing evidence on her behalf. The fact of the matter is that the matter is unrepresented for quite sometime and secondly, the absence of the counsel i.e. was on pilgrimage is an independent cause of action for the petitioner. The trial Court was not convinced that counsel had gone on pilgrimage. For the above reasons, this Court is not persuaded with the submissions of Mr.Venkateshwar Varanasi. The revision fails and is accordingly dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Date:01.10.2018
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S.V.BHATT, J