

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NOS.4953 AND 5031 OF 2018

COMMON ORDER

The petitioners in these civil revision petitions, filed under Article 227 of the Constitution, are the plaintiffs in O.S.No.556 of 2008 on the file of the learned XIV Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar. Their prayer in the said suit was threefold - to declare them as the absolute owners and possessors of the suit schedule property and that the defendant had no right, title or interest over the same; to grant a consequential restraining order against the defendant or any one claiming through him from interfering with their peaceful possession and enjoyment of the suit schedule property; and to cancel the sale deed bearing Document No.10371 of 2005 dated 01.10.2005 executed in favour of the defendant. The said suit was dismissed for default on 20.03.2015. I.A.No.494 of 2016 was thereupon filed by the petitioners-plaintiffs in the said suit under Section 5 of the Limitation Act, 1963, to condone the delay of 413 days in filing a restoration petition.

However, as the process was not paid and notice had not been ordered, the trial Court dismissed I.A.No.494 of 2016 in O.S.No.556 of 2008, by order dated 31.07.2017. Be it noted that this order records that Sri B.Shankar, Advocate, appeared on behalf of the petitioners-plaintiffs. Despite their being represented by counsel in the said I.A., the petitioners-plaintiffs filed I.A.No.776 of 2017 in I.A.No.494 of 2016 in O.S.No.556 of 2008 under Order 9 Rule 9 CPC seeking restoration of I.A.No.494 of 2016 filed in the suit. In the affidavit filed in support of this petition, the Advocate appearing for the petitioners-plaintiffs deposed that he could not deposit the process by 31.07.2017 but did so on 04.08.2017

and the delay in that regard was attributable to him. He therefore sought restoration of I.A.No.494 of 2016. Thus, this petition was not even supported by the affidavit of either of the parties but by their Advocate.

The Advocate for the petitioners-plaintiffs also filed I.A.No.830 of 2017 in I.A.No.494 of 2016 in O.S.No.556 of 2008 under Section 148 CPC seeking restoration of I.A.No.494 of 2016 filed in the suit.

By separate orders dated 17.07.2018, the trial Court dismissed both the I.As. Aggrieved thereby, the petitioners-plaintiffs are before this Court by way of these revisions. C.R.P.No.4935 of 2018 arises out of the dismissal of I.A.No.830 of 2017 while C.R.P.No.5031 of 2018 pertains to the dismissal of I.A.No.776 of 2017.

Heard.

It is manifest on the face of the record that neither of the petitions was filed under the correct provision of law. Order 9 Rule 9 CPC had no application to a case where the plaintiff was represented by counsel. Similarly, Section 148 CPC, dealing with enlargement of time, did not have anything to do with restoration of the condone delay petition. That apart, perusal of the order dated 17.07.2018 passed by the trial Court dismissing I.A.No.830 of 2017 in I.A.No.494 of 2016 in O.S.No.556 of 2008 demonstrates that except for filing a petition, the Advocate appearing for the petitioners-plaintiffs did not even choose to file a supporting affidavit. In the absence of an affidavit, the petition itself was not maintainable. This Court therefore finds no error having been committed by the trial Court in dismissing I.A.No.830 of 2017 filed in I.A.No.494 of 2016 in O.S.No.556 of 2008.

In so far as the dismissal of I.A.No.776 of 2017 is concerned, as already pointed *supra*, the petitioners-plaintiffs did not even file an

affidavit in support of the petition and it was their Advocate who did so. At best, the Advocate could have filed an affidavit in support of the affidavit of either of the parties themselves but he could not have filed a petition on their behalf solely supported by his own affidavit. Further, as rightly pointed out by the trial Court, no acceptable reason was cited by the said Advocate to account for the delay on his part in paying the process fee. Be it noted that the affidavit itself discloses that the matter was undergoing adjournments since February, 2017 for deposit of process and the trial Court patiently waited up to 31.07.2017. The Advocate did not even mention as to when the process fee was paid to him by the petitioners-plaintiffs and why there was a delay on his part in depositing the same. By baldly claiming that the delay was due to his attending to different Courts was not reason enough for the Advocate to seek restoration of the condone delay petition. The trial Court was thus fully justified in disallowing the pleas of the Advocate on behalf of the petitioners-plaintiffs, without their actual participation in the exercise.

Both civil revision petitions are therefore devoid of merit and are accordingly dismissed. Pending miscellaneous petitions, if any, in both cases shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

21st DECEMBER, 2018

Sv