

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
CIVIL REVISION PETITION Nos.4962, 5000 and 5003 of 2018

ORDER:

Heard the learned counsel for petitioner and Sri D.Goverdhana Chary, learned counsel for respondents.

2. These three Revisions arise out of the same suit O.S.No.14 of 2013 on the file of the V Additional District Civil Judge, Tirupati and they are being disposed of by this common order.

3. Petitioner is the defendant in the said suit.

4. The respondents filed the suit for cancellation of a registered agreement of sale-cum-G.P.A. dt.12-07-2012 in respect of the property located in Mungilipattu Kothapalli village.

5. The petitioner, who is the defendant in the suit, was set *ex parte* on 14-03-2017 since he did not file written statement.

6. Thereafter the matter underwent adjournments and the suit was posted for judgment to 07-03-2018.

7. At that stage, the petitioner filed I.A.No.114 of 2018 under Order IX Rule 7 C.P.C. to set aside the order dt.14-03-2017; I.A.No.115 of 2018 to reopen the suit for the purpose of cross-examination of P.W.1 and also to adduce evidence on behalf of the petitioner and I.A.No.116 of 2018 to recall P.Ws.1 to 4 for the purpose of cross-examination.

8. In the application to aside the order dt.14-03-2017, the petitioner contends that he fell seriously ill and was advised bed rest for long period; after recovering to certain extent, when he met his Advocate, he came to know that he was set *ex parte* on 14-03-2017 and case was posted to 17-03-2018; and he should be given an opportunity to contest the suit. He also filed a medical certificate to show the nature of his illness

9. In the affidavits filed in support of other applications, he stated that he should be given an opportunity to cross-examine plaintiff's witnesses and also adduce evidence in support of his defence.

10. Counter-affidavit was filed by respondents opposing these applications. It is contended that the medical certificate produced by petitioner refers to a disease 'viral polyasthraliya' and it was issued by one retired Medical Civil Surgeon of Tirupati and what the nature of the illness is and whether it requires bed rest or not is not stated by the medical practitioner or in the medical certificate.

11. Accepting the case of respondents, the Court below dismissed the applications.

12. Aggrieved thereby, these Revisions are filed.

13. Learned counsel for petitioner contended that the suit relates to cancellation of an agreement of sale-cum-G.P.A. with regard to valuable properties and the petitioner should not be denied opportunity to contest the suit, and the Court below was not right in

dismissing the applications merely because it was not convinced about the illness with which the petitioner suffered. He also pointed out that when the respondents did not dispute the filing of medical certificate by petitioner in the Court below, the Court below was not right in holding that there was no medical certificate filed at all.

14. Learned counsel for respondents, on the other hand, supported the orders passed by the Court below.

15. Having regard to the statement in para-4 of the counter-affidavit filed by respondents in I.A.No.113 of 2018, it is obvious that petitioner did file a medical certificate issued by the retired medical practitioner that petitioner is suffering from 'viral polyasthraliya', though correctness of the same is disputed in the counter. So, the Court below was not right in holding that the petitioner did not file medical certificate. However it is true that the nature of the illness or duration of treatment and whether such illness disables people from moving around is not placed on record by petitioner.

16. However, since the suit relates to substantial immoveable properties in and around Tirupati, though the explanation of the petitioner for the delay in filing the application under Order IX Rule 7 C.P.C. does not appear to be very satisfactory, interests of justice would be served if the petitioner is allowed to contest the suit, subject to the petitioner paying costs of Rs.20,000/- to the respondents.

17. Therefore, these Civil Revision Petitions are allowed; petitioner shall deposit a sum of Rs.20,000/- (Rupees Twenty Thousand only) to the credit of O.S.No.14 of 2013 on the file of the V Additional District Judge, Tirupati within four (04) weeks from today; the respondents are entitled to withdraw the same without furnishing any security; in default of petitioner complying with this condition, the Civil Revision Petitions shall stand dismissed. If the amount is deposited by petitioner as directed above, the order dt.14-03-2017 setting the petitioner *ex parte* shall stand set aside, the suit shall stand reopened, and the petitioner shall be permitted to recall P.Ws.1 to 4 and cross-examine them and also lead evidence. However, petitioner as well as respondents shall cooperate in disposal of the suit, which being an old one, shall be decided within six (06) months from the date of receipt of copy of this order.

18. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 14-09-2018

vsv