

HONOURABLE SRI JUSTICE N. BALAYOGI
CIVIL REVISION PETITION No.3759 of 2012

ORDER:

The petitioners preferred this Revision Petition aggrieved by the orders passed by learned II Additional District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad, dated:15.6.2011 in I.A.No.2522 of 2007 in A.S.No.76 of 1995.

2. The contention of the petitioners is that the learned Trial Court ought to have seen that delay was caused due to non-prosecution of the case by the Advocate on record who was suffering from cancer and that the parties will not attend the Court and seek adjournment in the appeal stage and therefore, their presence is not required. It is the further contention that petitioners made efforts to get back the bundle from Advocate on record and immediately after getting bundle, on enquiry came to know that the appeal was dismissed for default and thereafter, immediately, filed restoration petition along with condone delay petition, therefore, the order of the Trial Court is void and unsustainable.

3. Per contra, learned Counsel for the respondent contended that the petitioners have not stated in the affidavit any sufficient cause particularly when previous Counsel died, when they got knowledge of dismissed for default of the appeal and also the date on which they received file from the wife of the deceased Counsel. The petitioners have to explain the day-to-day delay, more particularly, when the delay is of eight years; that in the absence of any sufficient material, the Trial Court is perfectly legal and valid in dismissing the Application.

4. Now, the point that arose for determination is:

Whether the order of the learned Trial Court suffer from legal infirmities warranting interference in this Revision Petition?

5. In this case, notice before admission was ordered to the parties to the correct address. When the petitioner was not co-operating to dispose of the Revision Petition, it is posted under the caption of "For Dismissal". Today, both the Counsels are present and requested to dispose of the Revision itself.

6. Heard both the Counsels and perused the material placed on record.

7. The undisputed facts are that the petitioners / appellants are plaintiffs who filed a Suit in O.S.No.146/1989 for declaration of title and recovery of possession. The said Suit was dismissed. Aggrieved by the said dismissal order, they preferred A.S.No.76 of 1995. The said Appeal Suit was dismissed for default on 09.3.1999. Thereafter, I.A.No.2522/2007 was filed on 13.7.2007 to condone the delay of 2987 days in preferring application and to set aside the default order in appeal dated:9.3.1999. In the affidavit in I.A.No.2522/2007, the petitioners stated the cause for delay as they engaged Mr.S. Narasimha Rao as Counsel and filed appeal; that as and when petitioners enquired the Counsel, they were informed that the appeal was in progress. Subsequently, petitioners came to know that their Counsel Mr. S. Narasimha Rao was suffering from cancer and was under treatment. However, they continued the same Counsel and later they came to know that the Counsel died due to cancer. After this, petitioners requested wife of late Narasimha Rao for return of the record and at last she handed over the file to petitioners in the last

week. On enquiry, they came to know that the appeal suit was dismissed for default on 9.3.1999. The above facts clearly show that the petitioners have got knowledge that the earlier Counsel S. Narasimha Rao was suffering from cancer and was taking treatment. They did not state the date on which S. Narasimha Rao died or the date on which the wife of the said Narasimha Rao handed over file to the petitioners and also the date of knowledge when they got the appeal suit was dismissed for default on 9.3.1999. But it is only in the grounds of revision, petitioners stated that the previous Counsel Sri S. Narasimha Rao died on 17.10.2003.

8. Admittedly, there is a delay of 2987 from 09.4.1999 to till filing of the present I.A.No.2522/2007 on 13.7.2007. The impugned order is a speaking order in detail with reasons which reads that O.S.No.146/1989 was dismissed on 17.4.1995. Aggrieved by the same, preferred A.S.No.76/1995. As per the docket order in the appeal and observed by the Trial Court, after many adjournments, the appeal is posted to 5.2.1999 for hearing and from there, it adjourned twice even by imposing costs and ultimately it was dismissed on 9.3.1999. On earlier date of hearing ie., 2.12.1998 also, there was no proper representation. No doubt, when the parties file an appeal by engaging Counsel, the parties on every adjournment need not appear. But it is their duty to act diligently, more particularly, when they got knowledge that their Counsel is suffering from cancer and taking treatment and could not attend the Court regularly and they should watch and observe the proceedings of the Court and further when the Counsel is unable to attend, parties should engage another Counsel and prosecute the matter.

9. Further, petition-affidavit is also not clear when previous Counsel died, when they got knowledge of dismissed for default of the appeal dated:9.3.1999 and also on verification, the date on which they received file from the wife of the deceased Counsel. In such circumstances, I find no absurdity / any illegality in the order of the Trial Court in finding that affidavit itself is vague and it demonstrates how the petitioners / appellants are not interested in giving full details and particulars in the petition-affidavit. It is also the settled law that petitioners have to explain day-to-day delay by showing sufficient cause for the said delay of 2987 days. Absolutely, there is no whisper/cause sufficient to condone such abnormal delay of 2987 days in the petition-affidavit or any peace of paper filed.

10. In view of the above facts and circumstances, I am of the considered view that the order of the Trial Court dated:15.6.2011 in I.A.No.2522 of 2007 in A.S.No.76 of 1995 is perfectly valid and legal and do not suffer any legal infirmities warranting interference of this Court.

11. In the result, the Civil Revision Petition is dismissed while confirming the order dated:15.6.2011 in I.A.No.2522 of 2007 in A.S.No.76 of 1995.

Pending Miscellaneous Petitions, if any, shall stand closed.

JUSTICE N. BALAYOGI

Dated:19-11-2018

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