

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.1981 of 2017

ORDER:

1 This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 22.02.2017 passed in I.A.No.930 of 2016 in O.S.No.529 of 2010 on the file of the Court of the Principal Junior Civil Judge, Ranga Reddy district at L.B.Nagar.

2 Heard the learned counsel for the petitioner. Though the notices on Respondent Nos.1, 3 and 4 were served, none appeared. Notice sent to respondent No.2 returned unclaimed. Hence service of notice on the second respondent is valid service.

3 A perusal of the record reveals that the petitioner filed O.S.No.529 of 2010 on the file of the Court of the Principal Junior Civil Judge, Ranga Reddy district at L.B.Nagar against the respondents for perpetual injunction in respect of the suit schedule property to an extent of Ac.1-00 in Sy.No.549 of Uppal Khalsa, Uppal Mandal. R.R.District. After completion of evidence on petitioner's side, the respondents filed I.A.No.930 of 2016 under Order VIII Rule 1 r/w section 151 CPC to condone the delay in filing the petition to receive documents. The petitioner filed counter *inter alia* contending that the plea taken by the respondents that the documents were misplaced is invented for the purpose of filing of the petition. The trial court, after affording reasonable opportunity to both parties, allowed the petition. Hence the present Civil Revision Petition.

4 The point for consideration is whether there is any illegality, irregularity or impropriety in the impugned order warranting interference of this Court?

5 The predominant contention of the learned counsel for the petitioner is that the trial court, without taking into consideration the prejudice likely to be caused to the petitioner, allowed the petition. In order to appreciate the rival contentions, this Court carefully perused the affidavit filed by the respondents in support of the petition and the counter filed by the petitioner. There is no mention in the counter that there is no foundation in the written statement about the proposed documents. As rightly pointed out by the learned counsel for the petitioner, the parties to the proceedings have to file the documents along with the plaint or written statement as the case may be. For one reason or the other, the respondents have not filed the documents along with the written statement. The underlying object of Order VIII Rule 1 CPC is to condone the delay in receiving the documents, provided the petitioners assign reasons. In the instant case, the respondents have taken a specific plea in the affidavit that the documents were misplaced. It is not uncommon to misplace the proposed documents in the house. The court shall not insist on technicalities at the cost of substantial justice. The court has to consider whether the receiving of documents will take away the right vested in favour of the opposite party. At the same time, the court has to consider whether allowing of such application will cause any prejudice to the opposite party or not. Even if the documents are received, the same will not cause are prejudice to

the petitioner. If the petition is dismissed, it may not be possible for the respondents to substantiate the stand taken by them in the written statement. The trial court, after taking into consideration the nature of the suit as well as the pleadings of both parties, allowed the petition by condoning the delay in receiving the documents. Moreover, the trial court received the documents subject to proof, relevancy and admissibility of the proposed documents. The trial court has assigned reasons much less cogent and valid reasons to its findings. This court shall not lightly interfere with the discretionary orders passed by the trial court unless there is an error apparent on the face of it. In the instant case there is no illegality, irregularity or impropriety in the impugned order, warranting interference of this court in exercise of jurisdiction under Article 227 of the Constitution of India. The Civil Revision Petition lacks merit and *bona fides* and accordingly the same is liable to be dismissed.

6 In the result, the Civil Revision Petition is dismissed. No order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

T. SUNIL CHOWDARY, J.

Dt: 04.10.2018

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