

THE HON' BLESRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION Nos.7112 & 7143 of 2018

COMMON ORDER:

Heard Mr. K. Koutilya holding for Mr. N. Sihari for revision petitioner.

2. The 2nd defendant in O.S.No.304 of 2010 in the Court of the Additional Senior Civil Judge, Tenali is the revision petitioner.

3. The 1st respondent herein filed O.S.No.304 of 2010 for partition and separate possession of plaint schedule properties. On 17.08.2012 O.S.No.304 of 2010 was decreed. The 1st respondent filed I.A.No.161 of 2014, an application for passing final decree in terms of the preliminary decree dated 17.08.2012. The 1st respondent filed I.A.No.528 of 2015 under Section 5 of Limitation Act to condone the delay of 445 days in filing LR application to bring on record the legal representatives of one Chadalavada Ramesh Babu/1st defendant in O.S.No.304 of 2010. On 10.03.2017, the learned trial Judge allowed I.A.No.528 of 2015. In the said background, the revision petitioner has filed I.A.Nos.415 and 416 of 2017, one to condone the delay of 135 days in filing review petition against the order dated 10.03.2017, and other to review the order dated 10.03.2017. The trial Court, through the orders impugned in the Civil Revision Petitions, rejected both the prayers. Hence the Civil Revision Petitions.

4. Mr. K. Koutilya contends that the order dated 10.03.2017 for all purpose is an *ex parte* order and is also result of either misrepresentation or fraud said to have been played by either the 1st respondent or his counsel. The revision petitioner claims that he has

substantive submissions to make in I.A.No.528 of 2015 and, therefore, the trial Court by carefully perusing the affidavit filed in I.A.No.415 of 2017 ought to have allowed these two prayers.

5. The contention since is made with considerable facts, this Court has perused all the orders passed from 10.03.2017, the affidavit dated 02.08.2017 in I.A.No.415 of 2017 and the orders under revisions. *Prima facie* it appears to this Court that the averments in the affidavit dated 02.08.2017 are found to be not correct. The petitioner seeks condonation of 135 days delay in filing the review application. The case is pending consideration at the stage of passing final decree in I.A.No.161 of 2014. The reasons stated for the delay, as rightly held by the trial Court, are completely unconvincing. The objection, if any now raised against either the 1st respondent or his counsel, does not also hold water having regard to the following findings recorded by the trial Court:

“The case of the petitioner is that he is the 2nd respondent in IA.No.528/2015 and when this Court posted the matter for hearing on behalf of R2 due to ill-health and headache he was unable to meet his counsel to know the court proceedings, therefore he was set *ex parte* and this court allowed IA.No.528/2015 on costs of Rs.500/- to other side and recently he came to know that the petitioner obtained fraudulent order by filing a memo on 17-3-2017 as if the costs were paid to the petitioner and he filed certified copy for order in IA.No.528/2015 on 10-3-2017 and Copy Application was numbered as 1103/2017 and he received certified copy on 28-4-2017 and filed another copy application number 1424/2017 for memo dated 17-3-2017 on 29-4-2017 and received certified copy on 10-5-2017, then his advocate identified that the petitioner obtained order in their favour by filing fraudulent memo but due to his ill-health and headache,

the petitioner is unable to meet his counsel till 1-6-2017 and his advocate advised to file Order 9 Rule 7 and Sec.151 CPC petition, therefore he filed the same to set aside the exparte order in IA.No.528/2015 and his advocate also advised to him they have to file a review petition, hence he filed the same along with the petition and he has no knowledge in legal process and it is only a mistake on his part in non-filing of review petition within one month from the date of this order and there is a confusion in order dated 10-3-2017 in IA.No.528/2015 hence in confusion they filed order 9 Rule 7 CPC and 151 CPC at the first instance hence delay was increased, therefore this petition filed to condone the delay of 135 days in filing review petition in IA.No.528/2015 dated 10-3-2017.

After receiving notice, the respondent opposed this petition by stating that the petitioner is very well aware about day by day proceedings and he is very negligent in prosecuting the matter and no documentary evidence submitted to substantiate his contention, but only to drag on the matter the present petition is filed, hence the same is liable to be dismissed.

On perusing the record, the petition mentioned the dates when he filed certified copy applications and when he received certified copies orders in IA.No.528/2015 and certified copy of memo dated 17-3-2017, but, he did not file any medical certificate to show that he suffered with ill-health and unable to appear before the court and why the 135 days delay occurred for filing review petition the reason was not properly explained and if he aggrieved by the order of this court in IA.No.528/2015 he shall prefer a revision but he did not file any revision against the order passed in IA.No.528/2015, and he did not adduce any evidence before this court to show that costs memo not signed by his counsel or by any other persons from his counsels office. Therefore no proper reason was mentioned for non-filing of the review

petition within the limitation period and no documents was submitted to prove his contention that he suffered with ill-health. Therefore, there is a gross negligence on the part of the petitioner in non-filing the review petition within the limitation period and the reason for condoning the delay of 135 days in filing review petition was not properly explained. Therefore the petition is liable to be dismissed.

In the result, this petition is dismissed.”

6. After perusing the record, I am satisfied that for reasons available in the matter, the trial Court has rejected both the prayers. No reason to interfere with the impugned orders.

7. The Civil Revision Petitions fail and are, accordingly, dismissed. There shall be no order as to costs.

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

December 06, 2018
v v



S.V.BHATT,J