

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NO.6695 OF 2017

Date: 19.01.2018

Between:

Kanne Satyanarayana s/o. Kanakaiah, Aged 68 years,
Occu: Retired Employee, R/o.H.No.1-7-972/1, Huntur
Road, Hanamkonda, Warangal, Warangal District.

..... Petitioner/
Defendant No.1

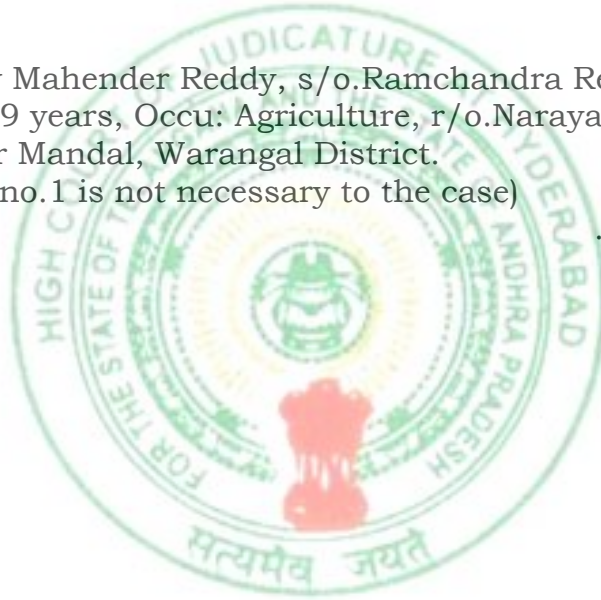
and

N.Rangaiah, S/o. Ramanujaiah, Aged 36 years,
Occu: Business, r/o..no.2-4-618/A, Ramnagar,
Hanamkonda, Warangal and another

.....Respondent/
Defendant No.2

Vallapureddy Mahender Reddy, s/o.Ramchandra Reddy,
Aged about 59 years, Occu: Agriculture, r/o.Narayanagiri
Dharmasagar Mandal, Warangal District.
(Respondent no.1 is not necessary to the case)

.... Respondent/
Plaintiff



The Court made the following:

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ORDER:

O.S.No.187 of 2012 is filed on the file of II Additional District Judge, Warangal to grant decree for specific performance of contract. Said suit was decreed *ex parte* on 30.04.2013. First defendant sought restoration of suit by setting aside decree. As there was delay of 295 days to seek to set aside *ex parte* decree, first defendant filed I.A.No.300 of 2014 under Section 5 of Limitation Act to condone the delay in filing such application. On 19.01.2016, when I.A. was called, there was no representation on behalf of first defendant and, therefore, I.A. was dismissed for non-prosecution. First defendant filed I.A.No.1049 of 2016 in I.A.No.300 of 2014 praying to condone delay of 12 days in filing petition to set aside the order dated 19.01.2016 dismissing I.A.No.300 of 2014.

2. In the affidavit filed in support of I.A.No.1049 of 2016, it was pleaded that on 19.01.2016 counsel on record fell sick and therefore, he could not appear and make submissions. The factum of counsel absenting on that day due to sickness and dismissal of I.A., was not known to the petitioner/first defendant and after coming to know, said I.A. is filed. Said application was opposed by the plaintiff. It was contended that first defendant is intentionally avoiding in attending to the Court and prosecuting the case and even though I.A.No.300 of 2014 was dismissed on 19.01.2016, he kept quiet for more than 40 days to file said application and no satisfactory explanation is offered as to why he kept quiet for such long time to file application. Further, this delay of 12 days cannot

be looked in isolation and has to be seen on the background of earlier orders of the Court. It is further contended that plaintiff has already deposited the balance sale consideration and filed E.P.No.82 of 2013, which is pending consideration.

3. The trial Court found that no explanation was offered why petitioner/first defendant kept quiet immediately after IA was dismissed and no explanation is offered for the delay and, therefore, dismissed the I.A.

4. Heard learned counsel for petitioner/first defendant and learned counsel for respondent/plaintiff.

5. Learned counsel for petitioner contended that delay in filing I.A., was not deliberate and wilful; that counsel on record could not attend to the Court on 19.01.2016 due to his sickness. Learned counsel submitted that counsel on record is unwell for some time and is consulting the Doctors in Hyderabad for treatment. On 19.01.2016 he could not attend the case because of his sickness. In support of his contention, petitioner/first defendant filed medical record of treatment undergone by the counsel on record along with CRP MP No.9367 of 2017. By placing reliance on the decision of this Court in **Yelka Ram Reddy and others v. Kancharla Indira and others**¹ and **Gangarapu Karennu v. Jami Karuou and another**², he would submit that while considering the condonation of delay, Court cannot go into conduct of the parties at other stages of the proceedings and leniency has to be shown to condone delay of 12 days. Petitioner/first defendant also enclosed the docket order in I.A.No.300 of 2014.

¹ 2004 (5) ALT 48

² 2011 (4) ALD 515

6. Per contra, learned counsel for respondent/plaintiff submitted that petitioner is deliberately avoiding enforcement of the decree. The history of the case would disclose that due opportunity was afforded to the petitioner, but he failed to avail. Suit underwent several adjournments for filing written statement and having granted sufficient time, as first defendant was not prosecuting the suit, the suit was decreed *ex parte*. He would further submit that even after decree was passed, petitioner took his own sweet time to file application to set aside *ex parte* decree. He would further submit that delay in filing this I.A., is not explained properly and that reason of health ground of counsel on record is only invented for the purpose of seeking condonation. According to learned counsel there are no *bona fides* in the claim of petitioner/1st defendant.

7. As observed by this Court in **Yelka Ram Reddy**, while considering the application for condonation of delay in setting aside the order in I.A.No.1049 of 2016, what is required to be seen is the amount of delay in filing application and reasons for delay and not the past conduct. In the instant case, application is filed 12 days after the limitation period was over. In the affidavit filed in support of I.A., petitioner asserted that his counsel was unwell and, therefore, could not attend to the Court. Petitioner has placed on record the medical record in support of contention of ill-health of his counsel. This statement of petitioner on ill-health of his counsel is not doubted by the plaintiff.

8. Having regard to the nature of delay and assertion of petitioner that on the particular day, his counsel could not attend the case because of his ill-health, without going into earlier

conduct of petitioner/1st defendant, Court is inclined to grant one more opportunity by condoning the delay in filing application under order 9 Rule 9 of CPC to set aside the order in I.A.No.300 of 2014 and to consider the application filed under Order 9 Rule 9 of CPC to set aside order in I.A.No.300 of 2014 on its own merits. It is needless to observe that the Court has not gone into previous conduct of petitioner/first defendant in prosecuting the litigation or justification assigned in filing application to set aside order dismissing I.A.No.300 of 2014. It is always open to the plaintiff to contest the claim of petitioner/first defendant. However, having regard to the facts of the case, Court is inclined to award costs of 2000/- (Rupees two thousand only) payable to the respondent/plaintiff. The costs shall be deposited within a period of two weeks from the date of receipt of copy of this order. It is also made clear that petitioner/first defendant shall appear on the date fixed by the trial Court to hear application to set aside order in I.A.No.300 of 2014 and if the petitioner/first defendant does not appear on the date fixed and make submissions, it is open to the trial Court to proceed further in accordance with law. If the costs are not paid within the time granted, this Revision stands dismissed.

9. Accordingly, Civil Revision Petition is allowed. Miscellaneous petitions if any pending shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 19.1.2018
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