

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Revision Petition No.6715 of 2017

ORDER:

Defendant No.10 in O.S. No.540 of 2011 and sole petitioner in I.A. No.96 of 2017, on the file of II-Senior Civil Judge, City Civil Court, Hyderabad, is the present Revision petitioner.

2. He filed I.A. No.96 of 2017 requesting to condone the delay of 360 days in filing the petition to set aside *ex parte* decree, dated 19.12.2013, passed in O.S. No.540 of 2011, by the learned II-Senior Civil Judge, City Civil Court, Hyderabad, on 6.9.2017.

3. Learned II-Senior Civil Judge assigned certain reasons and having found that defendant No.10 failed to substantiate sufficient cause to condone the delay dismissed the application. Aggrieved over the said order, he filed the present Civil Revision Petition under Article 227 of the Constitution of India.

4. Heard Sri Vedula Srinivas, learned counsel for the petitioner, and Sri Mohd. Osman Shaheed, learned counsel for respondent No.1/plaintiff.

5. Learned counsel for the revision petitioner would contend that the Court below ought to have resorted to liberal approach, which has been succinctly held by the Hon'ble Apex Court. According to him, the petitioner could gain knowledge of passing of *ex parte* decree only after an advocate-commissioner came to the suit

schedule property on 6.12.2014 for inspecting the same and then learnt that the respondent No.1 in collusion with others got the preliminary decree, though, there was amicable settlement between them pursuant to the elders' intervention and he was under the impression that since the matter was settled, respondent No.1-plaintiff would not resort to obtaining preliminary decree but by practising fraud on Court in collusion with other respondents he obtained it and that itself is sufficient to condone the delay of 360 days, which the Court below did not properly appreciate.

6. *Per contra*, learned counsel for the respondent would submit that with an ulterior motive the petitioner herein has come up with all incorrect and untrue allegations. It is according to him that the revision petitioner got filed vakalat in the suit for partition on 1.4.2011 and later he did not participate in the proceedings, and, even after court commissioner visited the property for proposing mode of division in final decree proceedings, despite watching the proceedings and despite obstructing advocate commissioner, he has not moved the Court with the present request immediately and that itself would condemn his stand, and, therefore, the Court below rightly rejected his request.

7. Not much needed to probe into in view of the fact that it is clear from the counter-affidavit and also the petition annexed to the affidavit that the revision petitioner/defendant No.10 was perfectly aware of the proceedings pending before the Court below and

preliminary decree was passed initially and thereafter, proceedings were being taken up to pass final decree therein.

8. Learned trial Judge would refer to the conspicuous absence of relevant details as regards amicable settlement and resolution said to have passed by the elders of the family mentioned in the affidavit filed by the petitioner.

9. Second reason assigned by the Court below is that when final decree petition in I.A. No.240 of 2014 was filed, the revision petitioner personally attended the Court on 4.9.2014 in the final decree petition.

10. Third reason assigned by the Court below is that when the Court commissioner went to inspect the premises in execution of warrant he obstructed the proceedings on 6.12.2014, and these three reasons are sufficient to hold that he was perfectly aware of the proceedings and failed to file the present petition and the other Interlocutory Application for setting aside *ex parte* decree immediately, and only approached the Court on 25.08.2015. Thus, the conduct of the revision petitioner would not satisfy the conscience of the Court to view that there was sufficient cause and thereby dismissed the petition.

11. There is absolutely no legal infirmity in the order passed by the Court below. When the revision petitioner moved an application to set aside preliminary decree with delay condonation

petition, necessary details as to the settlement that alleged to have taken place according to him, ought to have mentioned in the affidavit since he is pleading fraud. Even he ought to have examined himself as a witness to satisfy the conscience of the Court in relation to sufficient cause which he did not do. The very fact that he filed vakalat in the suit and kept quiet and allowed to pass preliminary decree itself reflects that only with a view to get over the preliminary decree he appears to have invented the ground of amicable settlement through elders and the so called resolution without any relevant details thereto at all.

12. Even the conduct of the revision petitioner is exposed by the fact of his personal attendance in final decree proceedings on 4.9.2014. This, certainly, accounts for a strong circumstance staring at him, which he did not even attempt to explain it away and that itself is sufficient to reject his request. Even otherwise, having objected to final decree proceedings when the Court commissioner visited the suit property for suggesting mode of division pursuant to the warrant issued to him in the process of execution of warrant on 6.12.2014, he maintained silence without, immediately, rushing to the Court in making the present Interlocutory Application and the other Interlocutory Application for setting aside the preliminary decree.

13. There is absolutely no reason as to why he could not move these applications immediately after he appeared before the Court below in final decree proceedings on 4.9.2014. Therefore, it

cannot be said that the cause shown by him would constitute sufficient cause to condone the delay, and the reason assigned by him is without any relevant particulars.

14. There is no merit in the present Civil Revision Petition, and, accordingly, the same is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions if any pending in the Civil Revision Petition shall stand closed.

Dt. 28.06.2018
gbs



A.SHANKAR NARAYANA