

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.625 OF 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/plaintiff, aggrieved by the order, dated 21.11.2016, passed in I.A.No.309 of 2015 in O.S.No.174 of 2013 by the learned Additional Senior Civil Judge, Karimnagar, whereby, the petition filed by the petitioner/plaintiff requesting to condone the delay 88 days in filing a petition to set aside the order of dismissal of the Original Suit for default, was dismissed.

2. Heard learned counsel for the revision petitioner/plaintiff, learned counsel for the respondent No.4/defendant No.4 and perused the record.

3. Learned counsel for the revision petitioner/plaintiff would submit that due to ill-health, fever, etc., the revision petitioner/plaintiff could not adduce evidence in the subject suit. Though there are circumstances to allow the subject interlocutory application filed under Section 5 of the Limitation Act, 1963, the Court below erroneously dismissed the same and ultimately prayed to set aside the impugned order and allow the Civil Revision Petition as prayed for.

4. On the other hand, learned counsel for the respondent No.4/defendant No.4 would contend that the revision petitioner/plaintiff has no documents to produce during the evidence and there are no merits in O.S.No.174 of 2013. There is no satisfactory explanation with regard to the delay caused. The Court

below is justified in passing the impugned order and ultimately prayed to dismiss the Civil Revision Petition.

5. As seen from the material placed on record, the original suit was filed in the year 2009. Thereafter, it was transferred to the Court below and re-numbered as O.S.No.174 of 2013. The subject interlocutory application filed under Section 5 of the Limitation Act, 1963, to condone the delay of 88 days in filing the petition to set aside the order of dismissal of the suit, was dismissed *vide* impugned order dated 21.11.2016. In the affidavit filed in support of the subject interlocutory application, the revision petitioner/plaintiff had specifically stated that due to fever and ill-health, he could not contact his counsel on record to give his evidence in the said suit, which ultimately led to dismissal of the suit.

6. As seen from the affidavit filed in support of the subject interlocutory application, there is justifiable cause on the part of the revision petitioner/plaintiff in not proceeding with the evidence. In the given circumstances, the Court below ought to have adverted to the substantial issues such as declaration of title and cancellation of registered agreement of sale/GPA. There are no grave laches on the part of the revision petitioner/plaintiff to dismiss the subject interlocutory application. Moreover, the delay is not abnormal. The Court below ought not have dismissed the subject interlocutory application. Substantial issues are required to be addressed in the Original Suit. Under these circumstances, the impugned order is liable to be set aside.

7. Accordingly, the impugned order, dated 21.11.2016, passed in I.A.No.309 of 2015 in O.S.No.174 of 2013, by the learned Additional Senior Civil Judge at Karimnagar, is set aside. Consequently, I.A.No.309 of 2015 on the file of the Court below stands allowed as prayed for. At this stage, a request is made by the learned counsel for both sides to direct the Court below to dispose of the subject suit, expeditiously. Since the subject Original Suit is of the year 2009, the Court below is directed to dispose of the same in accordance with law, as expeditiously as possible, preferably within a period of six (06) months from the date of receipt of a copy of this order.

8. The Civil Revision Petition is, accordingly, allowed. No costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

Date: 19.11.2019
ssp

Dr. SHAMEEM AKTHER, J