

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.786 of 2019

ORDER:

This Revision is filed challenging the order dt.23.01.2019 in I.A.No.1159 of 2018 in O.S.No.779 of 2017 of the I Additional Senior Civil Judge, Warangal.

2. Petitioner is plaintiff in the said suit, which he filed for specific performance of an Agreement of Sale dt.10.07.2017 allegedly executed in his favour by the respondent for sale of the suit schedule property.

3. The respondent remained *ex-parte* and the suit was decreed on 23.04.2018 holding that the total sale consideration being Rs.8,09,400/- and petitioner having paid Rs.3,00,000/-, petitioner shall pay the balance sale consideration of Rs.5,09,400/- to the respondent and within one month of the decree and respondent should execute a registered Sale Deed in favour of the petitioner.

4. No payment was made immediately after the decree by the petitioner to the respondent or within one month from the date of passing of the decree.

5. On 14.09.2018, petitioner filed I.A.No.1159 of 2018 alleging that he approached the respondent to receive the remaining sale consideration and execute registered sale deed but the respondent refused to do so. He also stated that he applied for certified copy

of the decree of the trial Court on 24.04.2018; that it was made ready and delivered on 11.06.2018; that he was employed in the Police Department as Police Constable and could not get leave from his superior officials to contact his advocate; that he also had family problems; and therefore the said I.A., is being filed to seek permission to deposit the balance sale consideration in the Court below by condoning the delay of 65 days between 11.06.2018 and 10.09.2018.

6. By order dt.23.01.2019 the Court below dismissed the said I.A. It observed that no material is filed by the petitioner to establish that he offered the balance sale consideration to the respondent and the respondent refused to receive it; that he did not issue any notice to the respondent in writing demanding the respondent to receive the balance sale consideration and execute the registered sale deed; that petitioner cannot take advantage of the delay in obtaining certified copy of the decree in suit, because the petitioner had knowledge of the decree and conditions imposed in the decree and had to pay the balance sale consideration within 30 days from 23.04.2018 since the order itself was reflected in the A-Diary proceedings. It also observed that even after obtaining certified copy on 11.06.2018, petitioner did not take steps and explain the reason for his failure to take steps after 11.06.2018 till 14.09.2018; and that for depositing the balance sale consideration, there is no necessity for the petitioner

to come to the Court, and he can always handover the money to his counsel or have the money deposited through his relative.

7. Assailing the same, this Revision is filed.

8. It is not in dispute that under Section 28 of the Specific Relief Act, 1963, the Court which passes the decree of specific performance retains control over the matter and would ensure, if the conditions of the decree are fulfilled, execution of a proper conveyance by the vendor and also delivery of possession.

9. Assuming for the sake of argument that the petitioner had a 30 day grace period to pay the balance sale consideration to the respondent, and if really the respondent refused to receive the balance sale consideration offered by the petitioner, petitioner ought to have issued a notice to the respondent to receive the amount. Petitioner cannot take advantage of the receipt of certified copy of the decree on 11.06.2018, because the judgment was delivered on 23.04.2018 itself, and the contents of the judgment would have been mentioned in the A-Diary. Even after 11.06.2018, petitioner did nothing to comply with the direction in the decree to pay the balance sale consideration. Therefore, the contents of the affidavit filed by the petitioner in I.A.No.1159 of 2018 on 14.09.2018 show the absence of any readiness and willingness on the part of the petitioner to perform his part of the contract and that he was willfully negligent in complying with the

conditions imposed by the Court below in the decree. Therefore, Court has justified in dismissing I.A.No.1159 of 2018.

10. So, this Civil Revision petition fails and it is dismissed. No order as to costs.

11. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

18th June, 2019.

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