

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

C.R.P.No.1528 of 2019

ORDER:

This civil revision petition is filed questioning the order dated 22.03.2019 passed in I.A.No.1009 of 2015 in O.S.No.292 of 2005 by the III Additional District Judge, Ranga Reddy District at L.B. Nagar, dismissing the petition filed by the petitioner/plaintiff No.3 under Section 5 of Limitation Act to condone the delay of 1514 days in filing a petition to set aside the judgment of dismissal dated 16.03.2011 in O.S.No.292 of 2005.

2. The brief averments as set out in the affidavit filed in support of the impugned application are that the petitioner and others have filed a suit for cancellation of the registered sale deed and the same was dismissed for default on 16.03.2011. The petitioner states that he is an uneducated person and that on 16.03.2011, as he met with an accident and went into coma, he failed to appear before the trial Court to adduce evidence on his behalf, due to which, the trial Court dismissed the suit for default and the defendants have gained over the other plaintiffs. He further states that as he was taking treatment in the hospital due to serious injuries, by spending huge amounts, he could not file the application for restoration of the suit in time and hence, the delay of 1514 days occurred, which is neither willful nor wanton. He further states that the respondents had played fraud on the petitioner.

3. Respondent No.6 filed counter-affidavit in the impugned application stating that the petitioner has not come to the Court with

clean hands as he had suppressed the fact of his filing earlier petitions in I.A.Nos.1150 and 1151 of 2011 seeking condonation of delay of 47 days in filing a petition under Order IX Rule 9 of CPC and to restore the suit on file and the said petitions were dismissed for default on 05.09.2012 as there was no representation on behalf of the petitioner. Hence, the petitioner having already filed petitions, again filing of the present petition for the self same relief is not maintainable. He further states that the petitioner was not diligent in prosecuting the suit proceedings and therefore, the suit was dismissed for default on 16.03.2011 and even, the impugned application was also dismissed on 24.10.2016 for non-deposit of process, but subsequently, the same was set aside. He further states that the present petition is filed only to harass the bona fide purchaser of the property and that the petition is not maintainable as the plaintiffs, who were claiming the relief jointly in the suit, were made as respondents. He further states that the petitioner was habituated in filing petitions to drag on the matter for no valid reason. He further states that the petitioner has not produced any documentary evidence to substantiate his contention that he met with accident on 16.03.2011 and went into coma. He further states that the averments in the present petition are contrary to the pleadings in the earlier petitions. He also states that if the petitioner met with accident and went into coma, the basis for filing of the earlier petitions has not been explained.

4. Sri B. Chinnapa Reddy, learned counsel for the petitioner/plaintiff No.3, would submit that the petitioner has substantial merit in the matter and that the defendants had obtained

the property in their names by playing fraud on him and that if the petitioner is deprived of an opportunity in prosecuting the suit, he would suffer enormously. He would further submit that on account of the disability under Ex.A1, he could not pursue the suit by filing a petition for its restoration within time and in that process, the delay occurred. Learned counsel also would submit that though the petitioner had explained the delay in his earlier petitions, the trial Court failed to take into consideration the same and failed to appreciate the specific pleadings of the affidavit that there was fraud played by the defendants. He would further submit that the trial Court ought to have taken a lenient view in condoning the delay by putting the petitioner on certain terms.

5. Heard learned counsel for the petitioner and perused the order impugned.

6. The specific pleading of the petitioner is that on the date of dismissal of the suit for default i.e., 16.03.2011, he was in coma. Ex.A1-disability certificate shows that the petitioner was unwell and suffered with disability as on 29.11.2010. Assuming that the petitioner was unable to attend the Court on 16.03.2011, due to which the suit was dismissed for default, from 16.03.2011 till the date of filing of the application to condone the delay, there was no explanation forthcoming from the petitioner, except asserting that he was in coma. It may be noted that if a person went into coma, he would not know anything and the delay can be ignored, subject to production of proof therefor. However, the petitioner has completely failed to produce any evidence with respect to his assertion that he

was in coma, which prevented him from filing the application for almost 4½ of years, and even at this stage, he has not established the same.

7. This Court can take note of the fact that the suit was filed for cancellation of registered sale deed dated 10.02.2003 and the property appears to have been sold through general power of attorney bearing document No.669 of 1994 dated 13.05.1994. Viewed from any angle, the contention of the respondents that the suit was filed only to harass them cannot be brushed side. In the circumstances, the trial Court has taken all these aspects into consideration and rightly dismissed the delay condonation petition. It may be noted that the suit is of the year 2005 and even as per the affidavit of the petitioner, the suit is at the stage of trial. Therefore, there is no illegality or irregularity in the order of the trial Court, warranting interference by this Court.

8. Hence, the Civil Revision Petition is dismissed. No order as to costs.

9. Miscellaneous petitions, if any pending in this revision shall stand closed.

CHALLA KODANDA RAM, J

4th July, 2019

sj