

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

C.R.P.No.2655 of 2018 and C.R.P.(SR).No.22079 of 2018

COMMON ORDER :

Since the issue involved in both these revisions is inter-related and arise between the same parties, they are heard together and being disposed of by this common order.

C.R.P.No.2655 of 2018 is filed under Section 115 of C.P.C. challenging the order dated 14.02.2018 in I.A.No.321 of 2016 in O.S.No.20 of 2009 passed by the Senior Civil Judge, Siddipet, Medak District.

The petitioners herein are defendants in the suit O.S.No.20 of 2009.

The respondents filed the said suit against the petitioners for perpetual injunction restraining them from interfering with their peaceful possession and enjoyment of the suit schedule property.

After receipt of summons in the said suit, the petitioners have filed written statement opposing the suit claim, but did not lead evidence or cross-examine the respondents' witnesses. Therefore, the suit was decreed *exparte* on 30.08.2012.

Subsequently, the petitioners filed I.A.No.321 of 2016 under Section 5 of the Limitation Act, 1963 to condone the delay of 1,379 days in filing petition to set aside *exparte* decree dated 30.08.2012; and I.A.No.322 of 2016 under Order

9 Rule 13 of C.P.C. to set aside *exparte* decree dated 30.08.2012 and to restore the suit.

In the affidavit filed in support of the said applications, petitioner No.1 had stated that during the trial, she was set *exparte* and *exparte* decree was passed on 30.08.2012 and the counsel did not inform her about the stage of the case. She also stated that she filed an Appeal No.D/2851/06 before the Revenue Divisional Officer, Siddipet, against the respondents and the said appeal was allowed in her favour and this was informed to their counsel. It is also stated that the petitioners filed O.S.No.99 of 2008 before the Senior Civil Judge, Siddipet, for partition against the respondents; and earlier counsel of the petitioners stated that since Revenue Divisional Officer, Siddipet, passed orders in their favour, both the cases are not necessary, that both the cases are completed; and, therefore, the petitioners did not attend the Court. It is stated that in August, 2016, the respondents came to the suit land and tried to interfere with the possession of the petitioners over the suit land, that the petitioners filed a complaint before the Station House Officer, Toopran, against the respondents and the respondents then showed a copy of the judgment and decree in O.S.No.20 of 2009. It is, therefore, contended that the said delay be condoned.

There was no representation on behalf of the respondents nor did they file any counter affidavits opposing the relief sought in the applications.

However, the Court below dismissed both the applications by a common order dated 14.02.2018, observing that petitioner No.1 did not specifically mention or assign any reason as to what made her to be away from the proceedings in the suit; that she had not filed a copy of the plaint in O.S.No.99 of 2008 to substantiate her plea; and the delay of 1,379 days has not been satisfactorily explained.

Assailing the said order dt.14.02.2018, C.R.P.No.2655 of 2018 has been filed.

Learned counsel for the petitioners contended that grave prejudice would be caused to the petitioners, if the delay of 1,379 days in seeking to set aside the *exparte* decree dt.30.08.2012 is not condoned, and that sufficient cause has been given by the petitioners for not contesting the suit. In support of his contention, the learned counsel also placed reliance on a decision of this Court in R. KRISHNA ALIAS KISTAIAH vs. R. BALA NARASIAH (DIED)¹.

Learned counsel for the respondents refuted the said contentions and supported the order passed by the Court below.

Admittedly, the petitioners received summons in the suit and even filed written statement also. Thereafter, they remained *exparte* and an *exparte* decree was passed on 30.08.2012.

¹ 2014 (2) ALD 297

According to the petitioners, they had filed an Appeal No.D/2851/06 before the Revenue Divisional Officer, Siddipet, against the respondents and the same was allowed in their favour. According to the learned counsel for petitioners, the said order in the appeal was passed by the Revenue Divisional Officer, Siddipet, in 2010. The plea of the petitioners that their earlier counsel advised them that the suit would not be necessary and the case is completed and, therefore, they did not attend the Court, cannot be believed for the reason that the petitioners still need to contest the suit and no explanation is forthcoming from the petitioners as to why they did not attend the Court below and take steps to defend themselves in the suit, except conveniently blaming the earlier counsel for the alleged wrong advice.

Though learned counsel for the petitioners relied on the above decision in R. KRISHNA ALIAS KISTAIAH's case (supra), the facts therein are totally different from the facts in the present case. In the said case, the defendants had filed written statement in 2007, but the proceedings in the said suit had dragged on till 2010, when they were set exparte, because the counsel for the defendants did not appear, and it was the plea of the defendants' counsel that he would call them as and when their presence is required and he did not contact them thereafter.

In the instant case, such is not the situation, because even if order in Appeal No.D/2851/06 before the Revenue

Divisional Officer, Siddipet, is allegedly passed in favour of the petitioners, the petitioners would have to file the said documents in the suit and contest the suit and any order passed by the Revenue Divisional Officer, Siddipet, will not automatically result in closure of the suit.

In any event, there is an inordinate delay of 1,379 days on the part of the petitioners in seeking to set aside the *exparte* decree dated 30.08.2012. Therefore, I am of the opinion that the petitioners have grossly neglected in defending themselves in the suit.

For the aforesaid reasons, C.R.P.No.2655 of 2018 fails and it is accordingly dismissed.

In view of the order passed today i.e., on 19.03.2019 dismissing C.R.P.No.2655 of 2018 and for the reasons recorded therein, no orders are necessary in CRP(SR).No.22079 of 2018 filed by the petitioners challenging the order dated 14.02.2018 in I.A.No.322 of 2016 in O.S.No.20 of 2009 passed by the Court below refusing to set aside the *exparte* decree, and CRP (SR).No.22079 of 2018 is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, in these revisions shall stand closed.

M.S. RAMACHANDRA RAO, J

19.03.2019.
Msr

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19.03.2019
Msr