

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.1212 of 2017

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908, is filed by the petitioner/plaintiff, challenging the order, dated 17.01.2017, passed in I.A.No.76 of 2016 in O.S.No.36 of 2014, by the Junior Civil Judge at Bellampalli, whereby, the petition filed by the petitioner/plaintiff under Section 5 of the Limitation Act, 1963, to condone the delay of 408 days in filing an application to set aside the dismissal order, dated 23.03.2015, and to restore the suit to the file, was dismissed.

2. Heard the learned counsel for both sides and perused the record.

3. The learned counsel for the revision petitioner/plaintiff would contend that there was transfer of the subject suit from one Court to another Court. There are no grave laches on the part of the revision petitioner/plaintiff in filing the subject interlocutory application. The original suit is for perpetual injunction. The application for grant of temporary injunction in the subject suit was allowed by the Court below. There are several documents to show the title and possession of the revision petitioner/plaintiff over the disputed house site and the house. In the given

circumstances, the Court below ought to have allowed the subject interlocutory application and ultimately prayed to set aside the order under challenge and allow the Civil Revision Petition as prayed for.

4. On the other hand, the learned counsel for the respondents/defendants would contend that there are grave laches on the part of the revision petitioner/plaintiff. No sufficient cause has been explained to condone the delay. The Court below is justified in dismissing the subject interlocutory application. There is nothing to take a different view and ultimately prayed to dismiss the Civil Revision Petition.

5. It is evident from the record that initially, the subject suit was dismissed for default on 23.03.2015. Later, the revision petitioner/plaintiff filed I.A.No.57 of 2015 on 30.04.2015 for condoning the delay of seven days in filing a petition to set aside the order of dismissal for default. The said petition was allowed. Later, I.A.No.58 of 2015 was filed to set aside the order of dismissal for default, dated 23.03.2015. That application was also dismissed for default, since process was not paid for sending notices to the other side, even after lapse of one month. Later, the revision petitioner/plaintiff filed another application in I.A.No.1 of 2016 to restore I.A.No.58 of 2015. Even that application was also dismissed for default on 18.01.2016.

Subsequently, the revision petitioner/plaintiff filed the subject interlocutory application to condone the delay of 408 days in filing the application to set aside the dismissal order, dated 23.03.2015, and restore the suit to the file.

6. There is record to show that there was transfer of the subject suit from one Court to another Court. The revision petitioner/plaintiff is claiming documents to establish his tentative title and possession over the house site and the house. The substantial issue as to whether the revision petitioner/plaintiff is entitled for the relief of perpetual injunction is required to be adjudicated. Moreover, temporary injunction has been granted in favour of the revision petitioner/plaintiff, pending disposal of the subject suit. When substantial justice and technical considerations are pitted against each other, substantial justice deserves to be preferred. Substantial issues are required to be addressed in the subject suit. There are no grave laches on the part of the revision petitioner/plaintiff. Under these circumstances, the impugned order is liable to be set aside.

7. Accordingly, the impugned order, dated 17.01.2017, passed in I.A.No.76 of 2016 in O.S.No.36 of 2014, by the Junior Civil Judge at Bellampalli, is set aside. Consequently, I.A.No.76 of 2016 on the file of the Court below stands allowed by condoning the delay of 408 days in filing an

application to set aside the dismissal order, dated 23.03.2015.

8. The Civil Revision Petition, is accordingly, allowed.
There shall be no order as to costs.

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

11th November, 2019
Bvv

Dr. SHAMEEM AKTHER, J

