

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.7025 and 7059 of 2018

COMMON ORDER :

1. These two Revisions arise out of the same suit between the same parties. Therefore, they are being disposed of by this common order.
2. The respondent filed the suit O.S.No.1076 of 2015 against the petitioner alleging that petitioner is the tenant of the suit schedule premises and that she ought to be evicted there from. He also sought arrears of rent of Rs.1,20,000/- together with interest @ 15% per annum and Rs.60,000/- per month towards mesne profits from the date of suit till delivery of the suit schedule premises.
3. The suit was partly decreed on 28.02.2018 by the II Senior Civil Judge, City Civil Court, Hyderabad, and the petitioner was directed to deliver vacant peaceful possession of the subject premises to the respondent within three months. Respondent was also granted liberty to file separate application under Order XX Rule 12 CPC for determination of mesne profits.
4. Petitioner then filed A.S.(SR).No.18150 of 2018 under Section 96 of the CPC on 14.5.2018 before the Chief Judge, City Civil Court, Hyderabad with delay.
5. Along with the appeal, I.A.No.4840 of 2018 was filed to condone the delay of 116 days in presenting the appeal.

6. In the affidavit filed in support of the said application petitioner contended that after pronouncing of the judgment, she instructed the Junior counsel of the Counsel on record in the Court below to file copy application for obtaining certified copy of the judgment and decree, and she left to Guntur, where her younger daughter is staying, but the Junior counsel forgot to file application for certified copy and this resulted in delay in filing the appeal.

7. Counter affidavit was filed by the respondent opposing the said application and contended that no valid grounds were pointed out for condoning the delay.

8. In the meantime, the respondent had also filed E.P.No.36 of 2018 before the II Senior Civil Judge, City Civil Court, Hyderabad, for execution of the decree in O.S.No.1076 of 2015 on 10.08.2018.

9. By order dt.23.10.2018, the Chief Judge, City Civil Court, Hyderabad dismissed I.A.No.4840 of 2018 in A.S.(SR).No.18150 of 2018 stating that the reason assigned by the petitioner for the delay of 116 days in filing the appeal is not convincing or satisfactory and that the said delay cannot be condoned.

10. Assailing the order dt.23.10.2018 in I.A.No.4840 of 2018 in A.S.(SR).No.18150 of 2018, petitioner filed C.R.P.No.7059 of 2018.

11. In E.P.No.36 of 2018, in the meantime, the II Senior Civil Judge, City Civil Court, Hyderabad, noted that petitioner did not vacate the

subject premises and comply with the decree, that there was no stay for execution of the decree and so he issued delivery warrant against the petitioner in favour of the respondent.

12. Subsequently, two applications were filed by respondent to break open the locks of the E.P. Schedule property and for police aid.

13. On 16.11.2018, Docket Order was pronounced in the said E.P., stating that the delivery warrant had been returned by the Court Bailiff with an Endorsement that 'suit premises was locked'; that there was no appeal against the judgment and decree dt.28.02.2018 in O.S.No.1076 of 2015; therefore, fresh warrant of process can be issued in favour of the respondent with break open lock order to facilitate execution of the decree and so the said application was allowed. It was held that petition for providing police aid was not necessary at that stage and so it was dismissed.

14. Assailing the said break open lock order, CRP.No.7025 of 2018 is filed by the petitioner.

15. Counsel for petitioner contended that the Chief Judge, City Civil Court, Hyderabad, erred in not condoning the delay of 116 days in filing the appeal under Section 5 of the Limitation Act, 1963; that in fact the period of delay is not 116 days and is much less i.e., it was in fact only 38 days, and that the Court below could not have declined to condone the short period of delay by merely saying that the reasons are not convincing or satisfactory.

16. This court calculated the period of delay in filing the appeal and noticed that the period of delay was not 116 days as was mentioned in the application for condonation of delay by petitioner's counsel in the Court of the Chief Judge, City Civil Court, Hyderabad and that it was only 38 days and there was a miscalculation by petitioner's counsel of the duration of delay. This is not disputed by Counsel for respondent.

17. Also, the evidence on record indicates that petitioner's daughter, who was residing in Bangalore, was pregnant and the petitioner was taking care of her at Bangalore, but the affidavit for condonation of delay was drafted in a very negligent manner by petitioner's counsel stating that she had gone to Guntur, which was factually incorrect. Record also reveals that the petitioner's daughter delivered a baby on 19.11.2018.

18. Petitioner contends that on that day, the Court Amin contacted her over telephone stating that he was directed to break open the lock and take possession of the property; that petitioner then took a bus and came to Hyderabad on 20.11.2018, but petitioner's counsel mislead her and so she went to the Court and came to know about the true facts.

19. In view of the above circumstances, I am of the opinion that there is 'sufficient cause' for condonation of delay of 38 days and petitioner's right to appeal, a substantive right, cannot be allowed to be defeated by rejecting the application to condone the delay in filing the appeal that too because of the negligence of her counsel.

20. It is unfortunate that the Chief Judge, City Civil Court carried away by the counter affidavit filed by the respondent without correctly calculating the period of delay. It's order therefore cannot be sustained.

21. Accordingly, C.R.P.No.7059 of 2018 is allowed; order dt.23.10.2018 in I.A.No.4840 of 2018 in A.S.(SR).No.18150 of 2018 is set aside; I.A.No.4840 of 2018 in AS(SR).No.18150 of 2018 is allowed; and the Court below is directed to number the appeal and the stay petition, if any, filed therein, and proceed to decide the stay petition in accordance with law within 6 weeks from the date of receipt of a copy of this order.

22. Coming to C.R.P.No.7025 of 2018, the basic premise on which the said order dt.16.11.2018 in EP.No.36 of 2018, which is impugned therein, is passed is that there was no appeal against the judgment and decree dt. 28.20.2018 passed by the II Senior Civil Judge, City Civil Judge, Hyderabad in O.S.No.1076 of 2015.

23. This is factually incorrect since the petitioner did file an appeal on 14.05.2018 itself as mentioned above, the said order dt.16.11.2018 also cannot be sustained. Also there was no deliberate act on part of the petitioner to thwart the execution of the decree of the trial court and so the Court below should not have ordered the breaking open of the lock of the premises and delivery of possession of the EP schedule property to the respondent.

24. As mentioned earlier, the petitioner was in Bangalore to attend the delivery of her daughter when the order dt.16.11.2018 to break open the

locks was obtained by the respondent, on 19.11.2018 , the day petitioner's daughter delivered the baby, locks were broken by the Court Amin and possession was delivered to respondent. Petitioner obtained the copy immediately after coming to Hyderabad and when she opened the lock she noticed that all her furniture and belongings were in one room on 27.11.2018.

25. So the impugned order dt.16.11.2018 in E.P.No.36 of 2018 is set aside and the respondent is directed to restore possession of entire EP schedule premises to the petitioner forthwith; the proceedings in E.P.No.36 of 2018 shall stand stayed for a period of ten (10) weeks from date of receipt of copy of this order, and in the meantime, the Chief Judge, Civil Court, Hyderabad shall consider the stay application, if any, filed in the appeal by the petitioner and pass appropriate orders therein.

26. Accordingly, C.R.P.No.7025 of 2018 is allowed as above. No order as to costs in both the Revisions.

27. Consequently, Miscellaneous petitions pending if any, in both the Revisions shall stand dismissed.

23rd January, 2019.
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M.S. RAMACHANDRA RAO, J