

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

**C.R.P.No.6679 of 2017**

**ORDER:**

This Revision Petition is filed under Section 115 CPC challenging the order dt.08-11-2017 in E.A.No.68 of 2017 in E.P.No.8 of 2009 of the Senior Civil Judge at Nagarkurnool.

2. Petitioners are J.Dr Nos.3 to 7 in O.S.No.7 of 2003 on the file of the Senior Civil Judge, Nagarkurnool.

3. The said suit had been filed by respondent Nos.1 and 2 against respondent Nos.4 and 5 for declaration of their title to the plaint schedule property, eviction of the respondents and delivery of possession of the plaint schedule property to them.

4. The suit was decreed on 24-01-2008.

5. Thereafter, the respondent Nos.1 and 2/DHRs filed E.P.No.8 of 2009 for delivery of possession of the E.P. schedule property.

6. During the pendency of the E.P., the 2<sup>nd</sup> respondent died and 3<sup>rd</sup> respondent, who is his wife, was impleaded as a party in the E.P.

7. In the E.P., the respondent Nos.1 to 3 contended that the 4<sup>th</sup> respondent/APSRTC had constructed shops and leased the same to petitioners herein and therefore they are also impleaded as respondent Nos.3 to 7 in the E.P. though they are in fact not necessary parties. It

was further contended that 4<sup>th</sup> respondent /Telangana State Road Transport Corporation, who is Defendant no.2, did not remove materials in the subject land in spite of the decree passed against them and therefore vacant possession should be given to the respondent Nos.1 to 3.

8. Counter affidavit was filed in the E.P. by the / 4<sup>th</sup> respondent/2<sup>nd</sup> J.Dr. stating that the area claimed by respondent Nos.1 to 3 was part and parcel of open land of extent 1185 sq yds belonging to it, that they have preferred an appeal A.S.No.2 of 2012 before the IX Additional District Judge, Wanaparthy, against the judgment and decree dt.24-01-2008 in O.S.No.7 of 2003, that certain shops constructed by the APSRTC and were let out to petitioners and others, and it would cause inconvenience to the passengers and general public, if the decree is executed pending the appeal.

9. The petitioners were however set *ex parte* on 03-08-2009, since, after receiving notices in the E.P., they did not appear in the executing Court on that day.

10. On 15-09-2017, petitioners filed E.A.No.69 of 2017 to set aside the order dt.03-08-2009 setting them *ex parte* in the E.P., and also filed E.A.No.68 of 2017 to condone the delay of 2962 days in filing the application to set aside the order dt.03-08-2009 in the E.P. setting them *ex parte*.

11. In the affidavit filed in support of E.A.No.68 of 2017, the petitioners contended that the APSRTC had preferred an appeal A.S.No.2 of 2012 before the IV Additional District Judge, Nagarkurnool, along with stay application and it was pending and was posted to 15-09-2017; that the petitioners could not engage an advocate and appear before the executing Court on 03-08-2009, the date fixed for their appearance and so they were set *ex parte*; that petitioners run petty businesses and were eking out livelihood on the said E.P schedule premises; that after receipt of notices in the E.P., their business had not been good and they suffered heavy financial crisis and could not engage an advocate. They contended that they were not willfully negligent but could not attend the Court on the said date and also could not file any application within reasonable time because of their strained financial position. They therefore prayed that the delay be condoned.

12. Counter affidavit was filed by the 1<sup>st</sup> respondent opposing the condonation of delay. He contended that the application was filed only to drag on the matter and harass the respondent Nos.1 to 3 to avoid delivery of E.P. schedule property; that the E.P. had been filed in the year 2009 and even after receiving notices in the E.P., petitioners did not appear or engage any advocate to defend themselves; that they were set *ex parte* on 03-08-2009; there was no stay of execution of the decree granted in A.S.No.2 of 2012 filed by 4<sup>th</sup> respondent; that the 4<sup>th</sup> respondent had not cross examined P.W.1

in spite of giving several opportunities; that the appeal also was dismissed for default on 24-04-2012; that application to condone the delay in filing application to set aside the order dismissing the appeal was dismissed but the Revision filed against it was allowed by this Court; and though the appeal is restored, the 4<sup>th</sup> respondent/appellant had not filed any application to bring the legal representatives of 2<sup>nd</sup> respondent on record since the last three years; and when the bailiff of the Court went to the E.P. schedule property on 11-09-2017 to give possession to respondent Nos.1 to 3, petitioners had obstructed the bailiff by gathering in a mob and created nuisance and so the bailiff could not deliver possession to them. They also contended that though the respondent Nos.1 to 3 had succeeded in the suit in 2008, till date, they could not get possession because of the obstruction by the petitioners, that the financial position of the petitioners was good and they were doing businesses in Nagarkurnool town in real estate, also in Kirana and Flower business in the E.P. schedule property, and so the said delay cannot be condoned.

13. No evidence was let in by either party before the Executing Court.

14. By order dt.08-11-2017, the Senior Civil Judge, Nagarkurnool, dismissed E.A.No.68 of 2017 in E.P.No.8 of 2009. It held that the suit had been decreed on 24-01-2008 in favour of respondent Nos.1 and 2 for delivery of possession against 4<sup>th</sup> respondent but they did not deliver possession, and so the respondents

had filed E.P. against the petitioners, 4<sup>th</sup> respondent and 5<sup>th</sup> respondent.

15. It noted that notices were served on the petitioners directing them to appear before the Court on 03-08-2009 but they did not appear and filed the present application only after the Court issued warrant of delivery directing the Field Assistant of the Court to deliver the schedule property to the decree holders after resisting the Field Assistant, who attempted to deliver possession, and filed report in the Court to that effect.

16. It held that the petitioners were residing adjacent to the Court premises and there is no proper explanation for the abnormal delay of 2962 days in filing this application to set aside the *ex parte* decree dt.03-08-2009.

17. It also held that there is no stay of execution granted in A.S.No.2 of 2012 filed by 4<sup>th</sup> respondent and therefore E.A.No.68 of 2017 was liable to be rejected.

18. Assailing the same, this Revision Petition is filed.

19. Petitioners contended that the order passed by the Court below refusing to condone the delay of 2962 days in filing E.A.No.67 of 2017 to set aside the order dt.03-08-2009 setting them *ex parte*, has caused grave prejudice to the petitioners and that the Court below ought to have allowed E.A.No.68 of 2017 filed by the petitioners to condone the said delay. It is also contended that petitioners were not

financially sound and could not take steps to engage a counsel on 03-08-2009 to contest the proceedings in E.P. and therefore indulgence be shown to them and the delay be condoned.

20. On 28-11-2017, while issuing notices to the respondents, stay was granted by this Court for four weeks in C.R.P.M.P.No.8562 of 2017 which was extended from time to time but the stay had not been extended after 03-07-2018.

21. Be that as it may, learned counsel for the respondent Nos.1 and 3, Sri A.Kranthi Kumar Reddy, contended that the petitioners have sufficient means since they were admittedly lessees of 4<sup>th</sup> respondent and must be paying rentals to them by earning income from the businesses carried on by them, and they cannot therefore claim that they do not have the means to engage a counsel. He also contended that there is no stay of execution of the decree granted in the suit in A.S.No.2 of 2012 by the IV Additional District Judge, Nagarkurnool and there is no impediment to execute the decree which had been granted in favour of the decree holders in the year 2008. He also contended that no sufficient cause has been shown by the petitioners in condoning the inordinate delay of 2962 days to file a petition to set aside the order dt.03-08-2009 setting the petitioners *ex parte*.

22. Sri B.Mayur Reddy, learned counsel for 4<sup>th</sup> respondent, supported the contention of the petitioners.

23. From the facts narrated above, it is clear that O.S.No.7 of 2003 filed by respondent Nos.1 and 2 against respondent Nos.4 and 5 had been decreed on 24-01-2008 by the Senior Civil Judge, Nagarkurnool.

24. E.P.No.8 of 2009 had been filed in 2009 itself by respondent Nos.1 and 2.

25. Pending the E.P., the 2<sup>nd</sup> respondent having died, 3<sup>rd</sup> respondent was impleaded as his legal representatives.

26. No doubt, the 4<sup>th</sup> respondent had preferred A.S.No.2 of 2012 before the IV Additional District Judge, Nagarkurnool, challenging the judgment in the suit, but admittedly there was no stay of execution of decree in the suit O.S.No.7 of 2003 granted in the said appeal.

27. The 4<sup>th</sup> respondent or lessees from 4<sup>th</sup> respondent like the petitioners have no valid grounds to oppose the execution of the decree in E.P.No.8 of 2009 in the absence of any stay of execution granted in A.S.No.2 of 2012.

28. In any event, admittedly the petitioners had received notices in the E.P. and were directed to appear on 03-08-2009 by the Court below, but they did not do so. Admittedly, they are residing adjacent to the Court premises.

29. Their plea that they were having financial difficulties cannot be countenanced for the reason that they were businessmen

earning income from the businesses being run by them in the EP schedule premises taken on lease from the 4<sup>th</sup> respondent-Corporation and they must also be paying rents to 4<sup>th</sup> respondent Corporation. The licence itself produced by the petitioners themselves revealed that they were paying rental charges to the Corporation. If the petitioners did not have the means to engage counsel, they would not have been in a position to take lease from the 4<sup>th</sup> respondent-corporation or carry on business in the said premises.

30. Therefore, I do not believe the contention of the petitioners that they do not have financial resources to engage counsel to contest the E.P.

31. Therefore, I hold that the Court below did not commit any error of jurisdiction in refusing to allow E.A.No.68 of 2017 in E.P.No.8 of 2009 and in refusing to condone the delay of 2962 days in filing the application E.A.No.69 of 2017.

32. Accordingly, the Civil Revision Petition fails and is dismissed. No costs.

33. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 19-02-2019

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