

HON' BLE SRI JUSTICE M. S. RAMACHANDRA RAO

C.R.P. Nos. 7570, 7580, 7677, 7690 and 7718 of 2018

COMMON ORDER:

These four revisions arise out of the same proceedings between the same parties and therefore they are being disposed of by this common order.

2. Respondents had filed O.S.No.2121 of 2009 on the file of the XVII Additional Senior Civil Judge, City Civil Court, Hyderabad for eviction of the petitioner in C.R.P.No.7570, 7718 and 7690 of 2018 and the said suit came to be decreed on 17.09.2018.

3. The respondents also filed O.S.No.2122 of 2009 for eviction against the petitioners in C.R.P.Nos.7580 and 7677 and the said suit was also decreed on 17.09.2018.

4. The petitioners in C.R.P.Nos.7718, 7690, 7570 filed A.S.S.R.No.30055 of 2018, before the Chief Judge, City Civil Court, Hyderabad.

5. The petitioner in C.R.P.No.7677 and 7580 preferred A.S.S.R.No.30070 of 2018 before the Chief Judge, City Civil Court, Hyderabad.

6. Since there was a delay of 14 days in preferring both the appeals, I.A.No.6027 of 2018 was filed in A.S.S.R.No.30055 of

2018 by the petitioner in C.R.P.No.7570 of 2018, 7718 of 2018 and 7690 of 2018.

7. Likewise, the petitioners in C.R.P.Nos.7677 and 7580 of 2018 filed I.A.No.6025 of 2018 under Section 5 of the Limitation Act, 1963, to condone the said delay of 14 days in filing the appeals.

8. In the affidavit filed along with these applications originally, the reason for the delay was not mentioned and it was merely stated that after decree of the suit, the respondents were proceeding with the execution of the decree to get the petitioner vacated and to sell the property to third parties.

9. Having noticed the omission in the said affidavit about the reason for filing the appeals with delay, the petitioners filed I.A.No.6339 of 2018 in A.S.S.R.No.30055 of 2018 and I.A.No.6341 of 2018 in A.S.S.R.No.30070 of 2018 contending that under a mistaken impression that the appeal would lie to the High Court for which the period of limitation to file appeal was 90 days, the matter was delayed, but later it was realized that the appeal would lie to the Chief Judge, City Civil Court, Hyderabad only. It was further mentioned that the petitioners came to know about the judgment of the trial Court dated 17.09.2018, only on 24.09.2018, that there was a delay in filing a copy application for one week, that thereafter copy was made ready and delivered on 23.10.2018 and thereafter appeals were filed on

29.11.2018 and that the delay of 14 days in filing the applications was not deliberate and requires to be condoned.

10. Counter affidavits were filed by the respondents opposing all these applications. They contended that the applications I.A.No.6027 of 2018 and I.A.No.6339 of 2018 in A.S.S.R.No.30055 of 2018 were presented through a G.P.A. holder, but the copy of the G.P.A. was not served and permission under Rule 32 of Civil Rules of Practice was not taken. It is contended that if delay is condoned, the appeal would be numbered and then it would drag on for a further period of time causing prejudice to them. It is also alleged that certain rents payable to the respondents have not been paid.

11. In view of the said objection, the petitioner in C.R.P.Nos.7690, 7718 and 7570 of 2018 filed I.A.No.6340 of 2018 in A.S.S.R.No. 30055 of 2018 alleging that the principal who executed the G.P.A. was abroad, that the affidavit to be filed under Rule 33 was sent to him for his attestation, but it was not received by the petitioner and time to file the affidavit under Rule 33 may be extended for two more weeks.

12. By a common order dated 17.12,2018, the Court below rejected I.A.Nos.6027 of 2018 and 6339 of 2018 in A.S.S.R.No.30055 of 2018 holding that in the affidavit filed in support of I.A.No.6027 of 2018 in A.S.S.R.No.30055 of 2018, no reason was mentioned and the reasons subsequently stated are

not sufficient or convincing. It was observed that without mentioning reason for delay in the original affidavit filed in support of I.A.No.6027 of 2018, a subsequently improved affidavit was filed mentioning about the confusion regarding the forum where appeal is to be filed, and since Senior Counsel was appearing in the matter, such confusion cannot be taken as a valid reason. It therefore dismissed both I.A.Nos.6027 and 6339 of 2018.

13. Challenging these two orders, C.R.P.Nos.7570 and 7718 of 2018 are filed.

14. Likewise with the same reasons by separate order dated 17.12.2018, the Court below dismissed I.A.Nos.6025 and 6341 of 2018.

15. Challenging the same, C.R.P.Nos.7677 and 7580 of 2018 have been filed by the petitioners therein.

16. I.A.No.6340 of 2018 in A.S.S.R.No.30055 of 2018 was rejected by another separate order dated 17.12.2018 refusing to extend the time for filing affidavit under Rule 33 of the Civil Rules of Practice by the Principal of the G.P.A.

17. In the said order, it was stated by the Court below that the application for condonation of delay having been dismissed, the appeal itself would not exist and therefore no useful purpose

would be served by granting extension of time for filing the G.P.A., or the affidavit under Rule 33.

18. Assailing the same C.R.P.No.7690 of 2018 is filed.

19. Heard learned counsel for the petitioners in all these revisions and Sri Mirza Shanawaz Baig, learned counsel for all respondents in the revisions.

20. Learned counsel for the petitioners contended that the delay in filing the appeals was not willful and wanton, that there was a bonafide mistake in not mentioning reason for condoning the delay of 14 days in filing the appeals, in the affidavit filed initially in I.A.Nos.6027 and 6025 of 2018 in the appeals; after noticing the same better affidavit was filed and permission was sought in I.A.Nos.6339 and 6341 of 2018; the reasons mentioned therein are genuine; and the Court below should have accepted the same and condoned the delay in filing the appeals.

21. Learned counsel for the respondents supported the orders passed by the Court below and contended that if the delay is condoned, the appeal would get numbered and would remain pending for more than ten years, causing prejudice to the respondents. He also contended that the reasons assigned for seeking condonation of delay cannot be accepted and the Court below was right in dismissing the said applications.

22. It is not in dispute that the suits were filed for eviction of the petitioners by the respondents and had been decreed on 17.09.2018. Thus the appeals filed by the petitioners are substantive in nature and the correctness of the trial Court judgment is to be examined in the appeals.

23. No doubt there is a delay of 14 days in filing both the appeals i.e., A.S.S.R.No.30055 of 2018 filed against the judgment dated 17.09.2018 in O.S.No.2125 of 2009 and A.S.S.R.No.30070 of 2018 against the judgment and decree dated 17.09.2018 in O.S.No.2122 of 2009.

24. It is also true that in the affidavit filed initially, along with I.A.No.6027 of 2018 in A.S.S.R.No.30055 of 2018 and I.A.No.6025 of 2018 in A.S.S.R.No.30070 of 2018 under Section 5 of the Limitation Act, 1963 to condone the said period of delay in filing both the appeals, the reason for delay was not mentioned.

25. But when the petitioner sought to file better affidavit explaining the said reasons by filing I.A.Nos.6339 and 6341 of 2018, the Court below could not have rejected the said I.As. or refused to accept the reasons mentioned therein to condone the very short period of delay of 14 days. Mistakes are some times committed by counsel and sometimes by parties, and if the delay is not inordinate, such short period of delay as in the instant cases are to be condoned, so that substantive rights of the parties can be adjudicated. The reasoning of the Court

below that the reasons assigned are not convincing or satisfactory, and additional affidavit contains improvement, cannot be accepted and its view is clearly perverse and does not advance the cause of justice.

26. Therefore, I am of the opinion that the orders passed by the Court below cannot be sustained and deserve to be set aside. Accordingly, C.R.P.Nos. 7570, 7718, 7677 and 7580 of 2018 are allowed; orders passed by the Court below on 17.12.2018 in I.A.No.6027, 6339, 6341 and 6025 of 2018 are set aside and the said I.As. are allowed.

27. Coming to C.R.P.No.7690 of 2018 where the order passed on 17.12.2018 in I.A.No.6340 of 2018 in A.S.S.R.No.30055 of 2018 is challenged, the application for condonation of delay was filed through a G.P.A. holder and the petitioner had only sought extension of time for filing Rule 33 affidavit stating that such affidavit was being sent by the principal in U.S.A and had not been received by G.P.A. holder by the date the I.As. were taken up.

28. The said I.A. had been dismissed on the ground that I.A.No.6027 of 2018 to condone the delay in preferring the appeal had been dismissed.

29. Now that C.R.P.No.7570 of 2018 challenging the order passed in I.A.No.6027 of 2018 in A.S.S.R.No.30055 had been allowed and the said I.A.No.6025 of 2018 has also been allowed,

C.R.P.No.7690 of 2018 is also allowed; order dated 17.12.2018 in I.A.No.6340 of 2018 in A.S.S.R.No.30055 of 2018 is set aside; and I.A.No.6340 of 2018 is also allowed. Petitioners are granted three weeks from the date of receipt of a copy of this order to file an affidavit under Rule 33 before the Court below in the said appeal. There shall be no order as to costs.

30. As a sequel thereto, Miscellaneous Petitions pending if any in these Civil Revision Petitions, shall stand closed.

08.02.2019
vnb

M.S.RAMACHANDRA RAO

