

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.976 of 2020

ORDER :

This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, 1908 challenging the order dt.16.06.2020 passed in Interlocutory Application No.102 of 2018 in O.P.No.13 of 2012 on the file of the Co-operative Tribunal, Hyderabad.

2. The said O.P. had been filed by petitioners and respondent nos.5 and 6 against respondent nos.1 to 4 under Section 37 of the Mutually Aided Co-operative Societies Act, 1995 to declare cancellation of allotment of land made to petitioners which was purchased by respondent nos.1 to 4, as illegal and in violation of law; and to direct respondent nos.1 to 4 to produce clear marketable title to the subject land which had been allotted to petitioners who were members of the 1st respondent – Society.

3. Counter-affidavit had been filed by 1st respondent opposing grant of any relief to petitioners.

4. The O.P. was dismissed for non-prosecution on 23.09.2015.

5. The petitioners filed I.A.No.102 of 2018 under Section 5 of the Limitation Act,1963 on 31.10.2018 to condone the delay of (1135) days in filing application to set aside the order dt.23.09.2015

dismissing the O.P.No.13 of 2012 for non-prosecution and also separate application to set aside the said order.

6. In the affidavit filed in support of the said application they stated that they had engaged one D. Kanakasunder, that they were under the impression that the said counsel was representing the case and attending to the proceedings in the O.P.; that when they approached the said counsel in the 1st week of January, 2016 to know about the proceedings before the Tribunal, the counsel informed them that the O.P. had been dismissed for non-prosecution on 23.09.2015; that on account of oversight and rush of work, the said counsel pleaded that he could not represent the matter and that he would obtain certified copy of the dismissal order dt.23.09.2015, and asked the petitioners to come again later; that on 25.01.2016, when petitioners approached the said counsel, he gave them certified copy of the order dt.23.09.2015 dismissing the O.P. for non-prosecution along with a 'No Objection Vakalat' stating that his health is not permitting him to attend the Court work; that in April, 2016, the petitioners approached another Advocate, Sri K.V.L. Jayasimha, to file restoration petition and contest the case, but the said Advocate moved out his office from Hyderabad to Chikkadpally; that he informed the petitioners that the file relating to the case had been misplaced, that it would be traced out, and restoration petition would also be filed; but, the said Advocate suffered a massive heart-attack and had to undergo open heart surgery consequent to which he

stopped attending to Court work; and that the petitioners were under the impression that restoration petition had been filed and that he was pursuing the case.

7. The petitioners further contend that in the 2nd week of February, 2015 they visited the Office of Sri K.V.L. Jayasimha, Advocate, and came to know that he is not attending to Court work; that they came to know that the restoration petition had not been filed, and the Advocate's clerk then helped the petitioners to trace out the file and handed it over to petitioners.

8. The petitioners further contend that they then approached another Advocate, Sri A.V.L.S. Prakash, to file restoration petition. But the said counsel met with an accident and suffered head injury and became immobile for certain period.

9. According to petitioners, this caused the delay of (1134) days in filing the restoration petition, and petitioners prayed that the said delay be condoned and the O.P. be restored to the file of the Court.

10. Counter-affidavit was filed by 1st respondent opposing condonation of said period of delay in Interlocutory Application No.102 of 2018.

11. The 1st respondent contended that he had filed counter on 16.05.2012 in the main O.P. along with documents and contested the O.P.; that petitioners were given several opportunities to proceed with the O.P., but they did not do so; and on 11.06.2013, the O.P. had been

initially dismissed for non-prosecution. He contended that petitioners then filed I.A.No.295 of 2013 seeking condonation of delay in filing the restoration petition to which counsel for 1st respondent reported 'no counter', and the said I.A.No.295 of 2013 was allowed on payment of costs of Rs.1,000/- subject to the condition that the restoration petition should be filed without delay; that the O.P. was then restored to the file; but even thereafter, the petitioners did not prosecute the O.P. and the counsel for petitioners and the petitioners were not present on several dates. So, the Tribunal again dismissed it on 23.09.2015; that petitioners were negligent in prosecuting the O.P.; and that the offer of allotment of plots made by the 1st respondent – Society to the petitioners had been cancelled long back and the O.P. had become therefore infructuous.

12. On 16.06.2020, the Court below dismissed I.A.No.102 of 2018 in O.P.No.13 of 2012.

13. It recorded that the O.P. had been earlier dismissed for default, but was restored after condoning the delay in filing the restoration petition. But even thereafter in spite of giving sufficient opportunities to them, the petitioners did not prosecute the O.P. which resulted in its dismissal by the Tribunal.

It held that after obtaining certified copy of the order in January, 2016 from the counsel Sri D. Kanakasunder, the petitioners did not approach the Advocate, Sri K.V.L. Jayasimha, till April, 2016

three (03) months later, and they admitted that they contacted Sri K.V.L. Jayasimha only in the 2nd week of February, 2018, almost two years later. It therefore concluded that petitioners had not been following up the case and they had been negligent, and therefore, the delay of (1135) days is not liable to be condoned.

14. Assailing the same, the present Civil Revision Petition is filed.

15. The counsel for petitioners contended that the Tribunal erred in dismissing the I.A.No.102 of 2018 and that it ought to have appreciated the helplessness of petitioners in view of the circumstances pleaded in the affidavit filed in support of I.A.No.102 of 2018. The counsel for petitioners contended that petitioners had ill-luck of Sri D. Kanakasunder saying that he will not appear in the matter because of ill-health, Sri K.V.L. Jayasimha, the next Advocate, suffering an heart attack and undergoing treatment, and Sri A.V.L.S. Prakash, the last counsel, engaged by petitioners also suffering an accident and so this Court should intervene in the interests of justice, set aside the order passed by the Tribunal on 16.06.2020 in I.A.No.102 of 2018 and allow the said I.A.

16. I have noted the above contentions.

17. The fact that the O.P. which has been filed in 2012 was dismissed for non-prosecution in 2013 but was restored subsequently is not disputed.

18. Even thereafter, the petitioners and their counsel Sri D. Kanakasunder, did not appear in the matter which resulted in its dismissal for non-prosecution again on 23.09.2015.

19. It is the duty of the petitioners to follow up the matter with the counsel and keep track of what is happening in the O.P., but petitioners were negligent in doing so. According to them, they only contacted Sri D. Kanakasunder on 25.01.2016 and he then returned the file after furnishing to them certified copy of the order dt.29.03.2015.

20. Nothing prevented the petitioners from approaching another counsel immediately.

21. But, they waited till April, 2016 to approach Sri K.V.L. Jayasimha to file restoration petition. No details were furnished as to when the said Advocate suffered a heart attack and underwent open heart surgery and stopped attending to court work. It appears that petitioners having handed over the file to the said counsel forgot about it and did not follow up with the office of the said counsel to ensure that the restoration petition got filed and was pursued.

22. Almost 2 years later, in the 2nd week of February, 2018 only they contacted Sri K.V.L. Jayasimha, Advocate. Why they did not contact the said counsel between April, 2016 and February, 2018 is not explained by them. According to them he stated that he was not

attending the Court and the application for condonation of delay as well as the restoration petition had not been filed.

23. They then claim to have approached Sri A.V.L.S.Prakash, Advocate.

24. There is also no material placed before the Court below to show that the counsel Sri A.V.L.S. Prakash, engaged by petitioners, suffered accident and was not attending to Court.

25. So I agree with the Court below that the petitioners had been negligent and had not sufficient cause for condonation of the inordinate delay of 1135 days in filing the restoration petition to restore the OP.

26. I do not find any error of jurisdiction in the impugned order warranting interference with it under Sec.115 of the CPC.

27. Accordingly, the Civil Revision Petition fails and it is dismissed at the stage of admission. No order as to costs.

28. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: .10.2020

Ndr