

HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

CRP.Nos.2905 and 2908 of 2019

COMMON ORDER:

CRP.No.2905 of 2019 is filed to set aside the order and decree dated 27.11.2019 passed by the learned Special Sessions Judge for trial of Cases under SCs & STs(POA) Act-cum-VII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar in I.A.No.591 of 2019 in I.A.No.1949 of 2015 in O.S.No.1034 of 2015.

CRP.No.2908 of 2019 is filed to set aside the order and decree dated 27.11.2019 passed by the learned Special Sessions Judge for trial of Cases under SCs & STs(POA) Act-cum-VII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar in I.A.No.592 of 2019 in I.A.No.1950 of 2015 in O.S.No.1034 of 2015.

2. As these CRPs related to the same subject matter and virtually between the same parties, they are being disposed of by way of common order.

3. Respondent Nos.1 to 3/plaintiff Nos.1 to 3 filed suit in O.S.No.1034 of 2015 before the Court below seeking partition of properties and also cancellation of registered documents against the petitioner/defendant No.54 and others apart from other reliefs, wherein they have filed I.A.No.1949 and 1950 of 2015

seeking interim reliefs. Both applications when posted on 28.09.2016, the Court below noticed that counter affidavits were not filed and recorded as “treated as no counter of respondent No.54”. The petitioner/defendant No.54 filed written statement on 07.04.2017 itself. Then, the petitioner filed I.A.Nos.591 and 592 of 2019 to set aside the docket order dated 28.09.2016 and permit him to file counter affidavit in both the applications. The Court below dismissed the said applications vide separate order dated 27.11.2019 on the ground that the petitioner slept over in defending his case and has come-up with the delay of 895 days without any bonafides on his part to permit him to file counter affidavit. Challenging the said order, the present CRPs are filed.

4. Heard. Perused the record.

5. A perusal of the material on record discloses that the petitioner has filed written statement in the main suit on 07.04.2017 and also prior to that, the counter affidavit was prepared and handed over to the counsel and due to change of counsel, the present counsel came to know when I.A.Nos.1949 and 1950 of 2015 were posted on 26.09.2019 for arguments, that counter affidavits were missing from the Court file. Immediately on noticing the same, the petitioners filed the

present applications to set aside the said order and to receive the counter affidavit in both the applications. But the Court dismissed both the applications separately vide impugned order. The Court below has not taken into consideration the aspect of filing written statement and the reasons for not filing the counter affidavits were also not properly considered. It is true that there is delay of 895 days in filing the counter affidavit, but it appears that the reasons mentioned by the petitioner are satisfactory and obviously there was no reason to believe that it was an intentional act. As such, the reasons assigned by the petitioner in the affidavits to receive counter affidavits appear to be reasonable and satisfactory. Besides that, no prejudice would be caused to the case of respondents/plaintiffs, if the counter affidavits are allowed to be taken on record.

6. For the foregoing reasons, I am of the opinion that counter affidavits filed by the petitioner in I.A.Nos.1949 and 1950 of 2015 can be taken on record and consequently, the impugned order dated 27.11.2019 in both the Interlocutory Applications is liable to be set aside.

7. Accordingly, the CRP.Nos.2905 and 2908 of 2019 are allowed. Consequently, the impugned order, dated 27.11.2019,

passed in I.A.Nos.591 and 592 of 2019 is hereby set aside and the said applications are allowed. The Court below is directed to receive the counter affidavits in both the I.As. on record. However, the Court below is further directed to dispose of I.A.Nos.1949 and 1950 of 2015 as expeditiously as possible. Pending miscellaneous applications, if any, shall stand closed.

A.SANTHOSH REDDY,J

14.09.2022

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