

HONOURABLE SRI JUSTICE M. GANGA RAO

Civil Revision Petition No.4807 of 2010

ORDER:

The revision petitioner, who is appellant-landlord, filed this Civil Revision Petition under Article 227 of the Constitution of India, against the order dated 24-10-2009 passed in A.T.A.No.9 of 2008 by the Tenancy Appellate Tribunal-cum-Principal District Judge, West Godavari at Eluru, wherein and whereby the Appellate Court dismissed the appeal filed against the order dated 11-04-2008 passed in I.A.No.4452 of 2006 in ATC.No.17 of 2005 filed under Section 151 CPC for setting aside the *ex parte* order dated 19.12.2005 in A.T.C.No.17 of 2005, whereby the petition filed under the Tenancy Act was allowed.

The revision petitioner herein is the landlord and the respondents herein are the tenants. The tenants filed the petition under Section 10, 15 (1) and 16 (1) of Andhra Pradesh (Andhra Area) Tenancy Act, 1956 seeking a declaration that they are the cultivating tenants and a direction to the landlord not to interfere with the possession and enjoyment of the petition schedule land. The trial Court allowed the petition *ex parte* and declared the petitioners as cultivating tenants in respect of the petition schedule property and consequently granted permanent injunction restraining the respondent-landlord from alienation of the petition schedule property. Aggrieved by the said order, the landlord filed I.A.No.4452 of 2006 under Section 151 CPC seeking to set aside the *ex parte* order dated 19-12-2005 passed in A.T.C.No.17 of 2005. The trial

Court dismissed the said application by the order dated 11-04-2008. Against the said order, the landlord filed A.T.A.No.9 of 2008. However, the Appellate Court dismissed the appeal confirming the order passed by the trial Court.

Learned counsel for the petitioner would submit that the Appellate Tribunal erred in confirming the findings of the trial Court given in the order dated 11.04.2008 in I.A.No.4452 of 2006 in A.T.C.No.17 of 2005. He further contends that even though wrong provision of law was mentioned, the court has to rectify the same and pass orders since the justice is paramount important.

On the other hand, learned counsel for the respondents contends that the Appellate Tribunal is justified in dismissing the appeal, confirming the findings of the trial Court and the order under appeal does not suffer from any illegality or irregularity, and hence, he sought for dismissal of the revision petition.

In the facts and circumstances of the case, considering the submissions of the learned counsel and on perusal of the record, this court found that the trial Court made an observation that the petitioner has not filed any medical record. The Appellate Tribunal also held that the order in A.T.C.No.17 of 2005 was passed on 19.12.2005, but I.A.No.4452 of 2006 was filed under Order 9 Rule 9 of CPC and that it is quite obvious that the petition was filed under a wrong provision of law and that too beyond the period of limitation. The petitioner failed to show sufficient cause to condone the abnormal delay. However, this court, in ***D. Vidya Bai and others v.***

Anil Kumar R. Kamdar (died per LRs) and others reported in (2012 (1) ALT 405), held thus:

“it has to be seen whether a party has approached the Court with clean hands, whether there are latches on the part of said party, whether he is negligent, whether the explanation is convincing and, whether sufficient reasons for the delay have been shown. When a party is guilty of protracting the litigation on one ground or the other or playing hide and seek game and is negligent or careless in prosecuting the matter, the court, however the period of delay it may, whether it is huge or short, need not condone the delay. What is to be seen is whether the explanation is reasonable or not; whether there is any grain of truth in it or not; whether it inspires the confidence of the court or not; and whether necessary particulars explaining the delay have been given or not. All the facts and circumstances have to be carefully considered. Where it appears that the party is grossly negligent and where there is inaction on the part of the said party and where there are no bonafides, the delay cannot be condoned, however short it may be”.

The Apex Court in **P.K. Ramachandra v. State of Kerala and another**, also held that *“law of limitation may harshly affect a particular party, but it has to be applied with all its rigor when the statute so prescribed and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained.”*

Having regard to the ratio laid down by this court and the Apex Court, this court is of the view that the Appellate Tribunal is justified in dismissing the A.T.A.No.9 of 2008 and the reasons assigned by the Tribunal are just reasonable and well founded and there is no illegality or irregularity warranting interference of this court. Hence,

the Civil Revision Petition is devoid of merit and the same is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

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

M. GANGA RAO, J

Date: 04-09-2019

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