

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

-

CIVIL REVISION PETITION NO.3991 of 2015

-

ORDER:

This revision is preferred against the order passed by the I Additional Senior Civil Judge, Visakhapatnam in I.A. No.341 of 2012 in O.S. No.266 of 2006 dated 22.04.2015.

The petitioner herein is the plaintiff in O.S. No.266 of 2006 and the respondent in I.A. No.341 of 2012. I.A. No.341 of 2012 was filed by the respondents herein, under Section 5 of the Limitation Act, to condone the delay of 1706 days in filing the application under Order IX Rule 13 CPC to set aside the *ex parte* decree. The respondents herein were initially set *ex parte* on 03.04.2006 on their failure to file a written statement. Thereafter on 13.04.2006, they filed their written statement along with an application under Order IX Rule 7 CPC which was numbered as I.A. No.690 of 2006. The said I.A. was allowed by order dated 31.01.2007 on condition that the respondents pay costs of Rs.100/- to the petitioner herein on or before 12.02.2007. On the ground that the condition, for payment of costs, was not complied with, the petition was dismissed by order dated 14.02.2007 and, consequently, an *ex parte* decree came to be passed on 27.02.2007.

In the order under revision, the Court below noted that, in the present I.A, the second respondent herein had said that he had fallen sick because of diabeties and high blood pressure; he could not contact his Advocate; he did not know that the suit was dismissed for non-compliance of the condition; and he came to know of such dismissal only when he entered appearance in execution proceedings. The Court below held that the decree as passed was an *ex parte* decree; the I.A filed to set aside the *ex parte* decree, was dismissed on the ground that the respondent had failed to comply with the condition for payment of costs of Rs.100/- even though written statement was enclosed; it was a fit case where the delay should be condoned, more so as the subject matter of the suit pertained to recovery of money based on a promissory note for Rs.1,80,000/-; and no prejudice would be caused to the petitioner herein, if the delay was condoned. The delay was, accordingly,

condoned.

While Sri G.L. Nageswar Rao, Learned Counsel for the petitioner, would submit that exercise of discretion by the Court below is illegal, it must be borne in mind that condonation of delay are matters of discretion to be exercised by the Court below for just and valid reasons. As long as the exercise of discretion, to condone the delay, is not patently illegal, this Court would be loathe to interfere with the exercise of such discretion, in the exercise of its revisional jurisdiction. Interference with the order of the Court below would enable the petitioners herein to execute the decree and recover Rs.1,80,000/- without a contest of the suit on merits. The fact, however, remains that, while condoning the delay, the Court below has not even insisted upon the respondents paying the costs of Rs.100/- which was imposed on them earlier. As the petitioner herein has been made to suffer needless expenditure, only on account of the delay on the part of the respondents in invoking the jurisdiction of the Court below under Section 5 of the Limitation Act, I consider it appropriate to condone the delay on imposition of costs on the respondents. While I was initially inclined to impost costs of 2,000/-, Sri V.Y. Prabuvu, Learned Counsel for the respondent, would submit that the respondents should not be mulcted with exemplary costs, as the delay was for bonafide reasons. The delay of 1706 days, in filing the petition to set aside the *ex parte* decree, is condoned on condition that both the respondents together pay a sum of Rs.1,000/- to the petitioner; and file proof of payment before the Court below within two weeks from today. On proof of payment being filed, the delay shall stand condoned. The Court below shall decide the application, to set aside the *ex parte* decree, on its merits and in accordance with law.

The Civil Revision Petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

(RAMESH RANGANATHAN, J)

Date: 09.10.2015

MRKR

