

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION No.2065 of 2014

ORDER:

The application filed by the petitioner-defendant in I.A. No.806 of 2012 in O.S. No.37 of 2012, to set aside the *ex parte* decree, was dismissed by the Learned I Additional Junior Civil Judge, Chittoor by order dated 21.03.2014. The Learned Judge dismissed the application on two counts. Firstly that, while the *ex parte* decree was passed on 29.06.2012, the present petition was filed on 17.10.2012 beyond thirty days; the petitioner did not file an application to condone the delay, in filing the application to set aside the *ex parte* decree, in terms of Section 5 of the Limitation Act; the petitioner should have filed an application under Order 9 Rule 13 CPC, and not under Order 9 Rule 7; and no grounds were made out for interference.

Sri T.C. Krishnan, Learned Counsel for the petitioner would submit that the petitioner is 71 years old; and, instead of rejecting his application to set aside the *ex parte* decree, the Court below ought to have permitted him to file an application under Section 5 of the Limitation Act; and to amend the provision from Order 9 Rule 7 to Order 9 Rule 13 CPC.

Smt. S. Parneeta, Learned Counsel for the respondent, would submit that ignorance of law is no excuse; the petitioner's failure, to file an application under Section 5 of the Limitation Act, justified rejection of his application, to set aside the *ex parte* decree, by the Court below; and the order under revision does not suffer from a patent illegality warranting interference under Article 227 of the Constitution of India.

While an *ex parte* decree was passed on 29.06.2012, the petitioner filed an application to set aside the *ex parte* decree on 17.10.2012 less than four months thereafter. The order under revision does not disclose the time spent in obtaining a copy of the order whereby the petitioner was set *ex parte*. Be that as it may, since an application to set aside the *ex parte* decree was passed less than four months after the decree was

passed on 29.06.2012, ends of justice would require that the petitioner be given an opportunity to file an application, under Section 5 of the Limitation Act, seeking condonation of the delay, and to amend the provision from Order 9 Rule 7 to Order 9 Rule 13 CPC. On such applications being filed by the petitioner, the Court below shall examine the applications on its own merits uninfluenced by any observations made in this order.

As the respondent has been, needlessly, forced to enter appearance through Counsel before this Court for no fault of hers, the order of the Court below is set aside on condition that the petitioner pays Rs.2,000/- (Rupees two thousand only) to the respondent within two weeks from today; and proof of such payment is filed in Court within one week thereafter. The Civil Revision Petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

(RAMESH RANGANATHAN, J)

Date: 06.03.2015

MRKR