

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CIVIL REVISION PETITION No. 1484 OF 2015

ORDER:

This Revision is preferred on 09.04.2015 against the order dated 07.02.2015 passed in E.P.No. 54 of 2014. The judgment debtors – defendants in the suit are the petitioners. The main ground of challenge against the order dated 07.02.2015 passed by the learned II Additional Senior Civil Judge, Ranga Reddy District is that the petitioners herein have moved two Interlocutory Applications, bearing I.A.No. 1153 of 2014 and IA (SR) No. 3629 of 2014. I.A.No. 1153 of 2014 has been moved seeking condonation of 526 days delay in filing the petition for setting aside the *ex parte* decree for which purpose, IA (SR) No. 3629 of 2014 has been moved. Keeping the said Interlocutory Applications pending, the executing Court could not have ordered the E.P. on 07.02.2015.

Reacting to this complaint, this Court entertaining this Revision, on 17.04.2015, called for a report from the II Additional Senior Civil Judge, Ranga Reddy District with regard to the status of I.A.No. 1153 of 2014. In the report submitted, it is pointed out that I.A.No. 1153 of 2014 has been dismissed on 15.04.2015 and as a result, IA (SR) No. 3629 of 2014 stands rejected, but however, the fact remains that I.A.No. 1153 of 2014, which was moved along with IA (SR) No. 3629 of 2014 seeking to set aside the *ex parte* decree was pending as on 07.02.2015, the date on which the EP was ordered by the learned Presiding Officer. It is improper for the Court to have ignored to deal with I.A.No. 1153 of 2014 and IA. (SR) No. 3629 of 2014 as of 07.02.2015. Consequently, the order passed on 07.02.2015 in E.P. No. 54 of 2014 is an irregular one.

However, Sri P. Durga Prasad, learned counsel for the respondent - decree holder would submit that there are no *bona fides* behind the claim of the petitioners herein. In fact, the suit O.S.No. 2750 of 2006 was instituted as long back as on 14.11.2006 and in spite of receiving the notices, the petitioners have not entered their

appearance and have not also filed their written statement. As a result, they were set *ex parte* and the suit was decreed. Then again, the petitioners have moved two Interlocutory Applications, one seeking condonation of delay of 357 days and another for setting aside the *ex parte* decree. The Court has shown some lenience and compassion and consequently, allowed those Interlocutory Applications and restored the suit to file.

The 1st petitioner herein has filed his written statement on 10.11.2008 i.e nearly two years after the suit was instituted and thereafter, the issues have been settled by the Court on 10.11.2011. However, the petitioners have not contested the matter thereafter. The affidavit in lieu of chief-examination was filed on behalf of the plaintiff on 16.03.2012 and finding no progress relating to cross-examination, the plaintiff's side evidence has been closed on 03.04.2013. Then, the matter was posted to 10.04.2013 for defendants' evidence. The defendants have not led any evidence and consequently, the suit was decided *ex parte* on merits on 10.04.2013. Long subsequent thereafter, the Interlocutory Applications aforementioned have been moved once again seeking condonation of delay and for setting aside the decree. Be that as it may, those Applications have also stood dismissed on 15.04.2015 by the Court.

Even though the petitioners herein are totally lax in prosecuting their case carefully and properly, with a view to provide them one last and final opportunity to establish their defence before the Court, the order passed on 07.02.2015 in E.P.No. 54 of 2014 is set aside, subject to the following conditions:

- 1) the petitioners herein shall deposit one half of the EP amount before 30.06.2015;
- 2) upon such deposit being made, the decree-holder shall be permitted to withdraw the same without furnishing any security;
- 3) in case the petitioners commit any default in depositing half of the decretal amount by 30.06.2015,

the EP stands allowed in terms of the order passed on 07.02.2015 itself without any further reference to this Court, on 01.07.2015; and

- 4) however, the EP is directed to be decided within a period of two months from the date of receipt of a copy of this order in case the petitioners comply with condition No.1 specified hereinabove.

With this, the Civil Revision Petition stands allowed. No costs.

Learned counsel for the respondent is also right in his criticism that all the judgment debtors are not proceeded against by the decree-holder in E.P.No. 54 of 2014, but however, all of them have joined in preferring this Revision and hence, for the mis-joinder of parties, this Civil Revision Petition deserves to be dismissed.

I am not pronouncing any final opinion on this aspect of the matter as the decree-holder by proceeding against only few of the judgment debtors has kept alive the option of proceeding against the other judgment debtors.

The miscellaneous applications, if any shall stand disposed of.

Registry is directed to communicate a copy of this order not only to the learned II Additional Senior Civil Judge, Ranga Reddy District but also to the Presiding Officer, who passed the order on 07.02.2015 wherever he is posted today.

NOOTY RAMAMOHANA RAO, J

24th June 2015

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