

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5615 of 2015

ORDER:

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This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioner/1st defendant is directed against the orders dated 08.12.2015 of the learned Senior Civil Judge, Khammam passed in I.A.no.1369 of 2015 in O.S.no.383 of 2007 filed under Order IX Rule 7 read with Section 151 of the Code of Civil Procedure, 1908 requesting to set aside the *ex parte* order passed on 21.01.2008 against the petitioner/1st defendant in the aforementioned suit.

2. I have heard the submissions of the learned counsel for the revision petitioner and the learned counsel for the 1st respondent/plaintiff. I have perused the material record.

3. The parties in this revision shall hereinafter be referred to as 'the 1st defendant' and 'the plaintiff', for convenience and clarity.

4. The introductory facts, in brief, are as follows:

The plaintiff had brought a suit against the 1st defendant and another (2nd defendant) for recovery of money on the foot of a promissory note dated 16.07.2005 for Rs.6,00,000/-. The 2nd defendant having entered appearance had filed a written statement and is resisting the suit. The 1st defendant did not enter appearance and had remained *ex parte*. When the suit is at the stage of hearing the arguments, the 1st defendant had filed the application in I.A.No.1369 of 2015 requesting to set aside the *ex parte* order dated 21.01.2008 made against him in the suit. That petition was resisted by the plaintiff by filing a counter. On merits, the trial Court had dismissed the said petition. Feeling aggrieved, the 1st defendant had filed this revision petition.

5. The learned counsel for the 1st defendant would submit as under:

“Since the suit is pending adjudication before the trial Court, an opportunity ought to have been provided to the 1st defendant to contest the suit as he is the principal borrower and principal party to the suit, even as per the plaint averments. The trial Court ought to have appreciated the reasons stated by the 1st defendant for not entering appearance in the suit and ought to have further seen that there is no limitation prescribed under law for seeking to set aside the *ex parte* order. The dismissal of the application seeking to set aside the *ex parte* order on the ground of delay is unjust and unfair. If the 1st defendant is afforded an opportunity to contest the suit on merits, it will not cause any prejudice to the plaintiff and on the other hand, granting an opportunity to the 1st defendant to contest the suit would meet the ends of justice. The court below ought to have seen that to show his *bona fides*, the 1st defendant had already filed the written statement along with the petition seeking to set aside the *ex parte* order. If the *ex parte* order is set aside and an opportunity is provided to the 1st defendant to contest the suit, he is prepared to cooperate with the trial court and complete the cross-examination of the witnesses of the plaintiff and adduction of evidence on his side, as expeditiously as possible and within any time frame that may be fixed by the trial court. The order impugned is unsustainable under facts and law and is liable to be set aside by providing an opportunity to the 1st defendant to contest the suit on merits as the suit is still pending final adjudication before the trial court. The contention of the plaintiff that the 1st defendant had filed the petition to set aside the *ex parte* order belatedly in collusion with the 2nd defendant is not correct. The 1st defendant is not aware of the suit proceedings as the plaintiff or any villager has not brought to the notice of the 1st defendant about the pendency of the suit. The 1st defendant is also prepared to pay an amount of reasonable sum towards costs to the plaintiff, in case the application is ordered to be allowed on payment of such costs.

6. On the other hand, the learned counsel for the plaintiff while supporting the order, which is assailed in this revision petition as one sustainable under facts and law would contend that the 1st defendant was served with suit

summonses sent by the Court by registered post with acknowledgment due and that an acknowledgment was duly received by the Court showing that the suit summonses were served on the 1st defendant and that therefore, the 1st defendant is very much aware of the suit, but, he had deliberately and willfully remained *ex parte* and had further kept quiet for about seven years and ten months and had then belatedly filed the present petition to set aside the *ex parte* order in collusion with the 2nd defendant in order to drag on the matter and harass the plaintiff.

7. I have noted the submissions and I have perused the material record.

7.1 The case of the 1st defendant in the affidavit filed in support of the petition to set aside the *ex parte* order, in brief, is as follows: 'Due to financial problems, the 1st defendant had changed his residence from his native place Vutukuru village to Hyderabad. This fact is known to his villagers. The pendency of the suit is not noticed by any villager. Even the plaintiff did not bring to the notice of the 1st defendant, the pendency of the suit. As such, the 1st defendant could not attend before the trial Court on the date fixed for his appearance. Hence, he was set *ex parte*. His absence before the trial court on 10.02.2011 is only for the above said reasons and is not intentional.'

7.2 The case of the plaintiff and the further submissions made on his behalf, in brief, are as follows:

Earlier, the plaintiff had filed CRP No.3480 of 2014 before this Court; and this Court, by orders dated 02.12.2014, had directed the learned trial Judge to dispose of the suit as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of the order in the said revision petition. Despite the efforts being made by the trial Court to dispose of the suit as expeditiously as possible, the defendants in collusion with each other are dragging on the proceedings. After an order of attachment was also passed in the suit by the trial court, the 2nd defendant had filed a false first information/complaint before the Station House Officer, Khammam II Town Police Station against the plaintiff alleging falsely that the

signatures on the suit promissory note were forged and that the suit promissory note was fabricated. On political influence, a case in Crime No.207 of 2007 was registered for the offences punishable under Sections 420 of the IPC and Sections 3, 5(b) and 24 of AP (Telangana Area) Money Lenders Act. In the said complaint filed by the 2nd defendant, the 1st defendant was cited as a witness. The police have recorded the statement of the 1st defendant also during the course of investigation on 09.12.2007. Therefore, the 1st defendant is very much aware of the pendency of the suit even by the year 2007. The conduct of the 1st defendant is not *bona fide*. The trial Court had rightly dismissed the petition by assigning valid reasons in the order impugned. The affidavit of the petitioner is silent in regard to the suit summons sent by the Court through registered post. In spite of due service of summonses, the 1st defendant, having intentionally remained *ex parte*, had kept quiet for quite a long time and had belatedly filed this petition with an ulterior motive when the suit has reached the stage of arguments. The 1st defendant is residing in the village and not in Hyderabad; and, no documentary proof is produced in support of the said averment in the affidavit filed in support of the petition.

8. I have given earnest consideration to the submissions. As already noted, in the affidavit filed in support of the petition to set aside the *ex parte* orders, the 1st defendant had stated that he had shifted his residence from his village Vutukuru to Hyderabad and that therefore, he is not aware of the suit and that neither the plaintiff nor any of his villagers had informed him about the pendency of the suit and that for the said reasons, he could not appear before the trial Court on the date fixed for his appearance and that his absence before the trial court on the said date is not intentional. Thus, the fact that he was served with summons sent by the Court through registered post is not denied. The Court below in its orders had noted that as per the orders in the docket sheet, the summons were served by registered post on the 1st defendant and that an acknowledgment is also available in the record of the Court and that the said fact reveals that the petitioner has received suit

summons sent by registered post with acknowledgment due. Thus, from the material record it is clear that the 1st defendant having been served with the suit summons did not appear before the court on 21.01.2008. Further, the 1st defendant was also cited as a witness by the 2nd defendant in the criminal complaint filed by him in the year 2007 and it is not in dispute that the 1st defendant was also examined by the police during the course of investigation into the said Crime No.207 of 2007. Therefore, it is beyond pale of controversy that the 1st defendant is having knowledge of the pendency of the suit even long prior the application was filed for setting aside the *ex parte* order. Therefore, the contention of the 1st defendant that till the filing of the application requesting to set aside the *ex parte* order, he is not having any knowledge of the institution of the suit by the plaintiff and also its pendency before the trial court cannot be countenanced. The 1st defendant had conveniently omitted to state in his affidavit that he received the suit summons and had also not explained the reasons for not approaching the trial Court with the request to set aside the *ex parte* order till the suit has reached the stage of arguments. He had also failed to explain as to why the said application could not be filed till the lapse of nearly eight years from the date he had remained *ex parte*. He did not plead in his affidavit and also could not show any circumstances which prevented him from approaching the trial Court within a reasonable time from the date he was set *ex parte*. The fact that he was supporting the 2nd defendant in the criminal case and that he had filed petition to set aside the *ex parte* order at a time when the suit is at the stage of arguments would show that the petition is intended to drag on the proceedings and it lacks *bona fides*. In the absence of any valid explanation for not appearing before the trial Court, despite service of suit summons and for not filing the application to set aside the *ex parte* order within a reasonable time and for all the reasons assigned, this court finds that the court below is justified in dismissing the application of the 1st defendant and that in the facts and circumstances of the case, the order impugned brooks no interference.

9. Viewed thus, this Court finds that there is no merit in the revision petition and the same is liable to be dismissed.

10. Accordingly, the Civil Revision Petition is dismissed at the stage of admission. No costs.

Miscellaneous petitions pending, if any, in this revision shall stand closed.

M. SEETHARAMA MURTI, J

23rd December 2015
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