

**IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE
OF ANDHRA PRADESH**

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CIVIL REVISION PETITION No.497 of 2015

Between:

Syed Azhar Mohiuddin

.. Petitioner

and

Hajira Begum (died) and 10 others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 12.8.2015

SUBMITTED FOR APPROVAL:

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**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

1. Whether Reporters of Local
newspapers Yes/No
may be allowed to see the Judgments?

2. Whether the copies of judgment may be
Yes/No
marked to Law Reporters/Journals?

3. Whether Their Ladyship/Lordship wish to
Yes/No

see the fair copy of the Judgment?

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.497 of 2015

ORDER:

This revision is filed challenging the order, dated 26.11.2014, in I.A.No.4922 of 2014 in O.S.No.224 of 2012 on the file of the I Additional Chief Judge, City Civil Court, Secunderabad.

2. The petitioner in the revision is defendant No.1 in the above suit. The said suit was filed by respondent Nos.1 and 2 for the relief of declaration that a development agreement dt.24.11.2010 was obtained from respondent No.1 under undue influence and with a threat to life; to declare the same as illegal and void; and to direct the petitioner herein and respondent Nos.7 and 8 to redeliver the possession of the suit schedule property back to respondent No.2 and for other reliefs.

3. After receiving summons in the suit, the petitioner herein engaged a counsel and filed vakalat in the suit. He claims to have also filed a memo seeking furnishing of the copies of plaint and other suit documents vide S.R.No.16542 of 2012, dated 27.12.2012, and alleges

that respondent Nos.1 and 2 have not furnished the same to him.

4. In view of the fact that the petitioner had not filed his written statement, he was set *ex parte* on 27.8.2013.

5. Defendant Nos.3 to 5 filed written statement admitting the suit claim while defendant Nos.2, 6 and 7 remained *ex parte*.

6. In view of the admission made by defendant Nos.3 to 5 and in view of the fact that the petitioner was *ex parte*, judgment was passed on 23.4.2014 in O.S.No.224 of 2012 decreeing the suit as prayed for with costs applying Order XII Rule 6 C.P.C.

7. After the suit was decreed on 23.4.2014, execution application was filed for execution of the decree for delivering of the possession and on 06.11.2014, the suit schedule property was delivered back to respondent No.2.

8. Thereafter, on 09.11.2014, the petitioner herein filed I.A.No.4922 of 2014 under Section 5 of the Limitation Act, 1963 to condone the delay of 170 days in filing the petition to set aside the decree dt.23.4.2014 in O.S.No.224 of 2012 alleging that the said decree is an *ex parte* decree, to set aside the same and permit him to defend the suit.

In the said application, he pleaded that he fell sick and had been confined to bed since 05.07.2013 and was unable to move out of bed as per the advice of the Doctor since he was suffering from high blood pressure and high diabetes. He alleged that he could not contact his counsel and instruct him to defend the case on his behalf even though vakalat was filed by him through a counsel and a memo was also filed on 27.12.2012 seeking copies of the plaint and other documents. He claimed that he had a very good case to succeed in the suit and the suit itself is barred by law and the Court had no jurisdiction to entertain, try or adjudicate in view of the existence of an arbitration clause between the parties. He also sought for restoring of the physical possession of the suit schedule property to him by way of restitution of possession and also an order of injunction restraining respondent No.2 from inducting any person or persons into the possession of the suit schedule property or to change the nature of the suit schedule property or encumber the same.

9. Respondent No.2 filed counter opposing the condonation of delay. He contended that the petitioner had filed his vakalat through his counsel in the suit, but denied that any notice was served on the counsel for respondent No.2 to furnish copies of plaint and other suit documents. He denied that petitioner had fallen sick from 05.07.2013 onwards and the allegation that the petitioner

could not meet his counsel to give instructions. He pointed out that the counsel for the petitioner, who filed vakalat, must be aware of the proceedings in the suit. He contended that no valid reason had been given by the petitioner for condoning the delay of 170 days in filing the application to set aside the *ex parte* decree. He also denied that the petitioner invested huge amount for construction of structures in the plaint schedule property and contended that the present application was filed only to drag on the matter.

10. Respondent Nos.9 to 11 also filed counter opposing the condonation of delay and took similar pleas to that taken by respondent No.2. They categorically asserted that the development agreement dt.24.11.2010 was obtained by the petitioner by threatening the deceased respondent No.1 and they claimed that the said agreement was also cancelled by the deceased respondent No.1 and in any event, it was unregistered and so, inadmissible in evidence.

11. Before the Court below, the petitioner marked Ex.A-1 – medical certificate issued by a Doctor by name Md.Ahmed, which discloses that the petitioner was under his treatment since 05.07.2013 for diabetes and hypertension and required prolonged treatment and costly medicines and was under complete bed rest. The respondents filed Ex.B-1 and B-2.

12. By order, dated 26.11.2014, the Court below dismissed the said application. The Court below held that although the petitioner has raised a contention that there is an arbitration clause in the development agreement, he never initiated any arbitration proceedings and by the date I.A.No.4922 of 2014 is filed, any claim under the said agreement would be barred by limitation. It held that the petitioner, by filing this application, was trying to squat over the suit schedule property to the detriment of respondent Nos.1 and 2 and filing of the said application amounts to an abuse of process of law. It held that Ex.A-1 – medical certificate does not explain specifically the reasons for condonation of delay of 170 days, that the alleged development agreement relied upon by the petitioner was an unregistered one and could not have even been received in evidence, and the petitioner cannot set up any case basing on the said agreement. It concluded that the delay in filing the application was deliberate and since the petitioner had not even filed the alleged development agreement dt.24.11.2010, his application is not *bona fide*.

13. Challenging the same, this revision is filed.

14. Learned counsel for the petitioner contended that the petitioner had fallen sick and the same is evident from Ex.A-1 – medical certificate; since the petitioner was

suffering from high diabetes and high blood pressure, which required complete bed rest, the Court below should have taken a lenient view and condoned the delay of 170 days in filing the application to set aside the *ex parte* decree.

15. Learned counsel for respondent No.2, on the other hand, contended that although the petitioner had remained *ex parte*, the decree passed by the Court below in the suit is a decree based on admission of defendant Nos.3 to 5 therein and is *stricto sensu* not an *ex parte* decree. He contended that the development agreement filed by respondent No.2 along with the counter-affidavit shows that there is no signature of the petitioner thereon and it was only signed apparently by the deceased respondent No.1 and no rights flow under the said agreement in favour of the petitioner. He further contended that the said agreement is not a registered agreement and is, therefore, inadmissible in evidence and the same had also been cancelled by the deceased respondent No.1 under Ex.B-1 notice dated 21.10.2011.

16. Sri Mohammed Imran Khan, learned counsel for the impleaded parties, also contended that the Court below should have condoned the delay of 170 days and adopted the submissions of the learned counsel for the petitioner.

17. I have noted the submissions of both sides. From the narration of facts, it is clear that the suit had been filed in November, 2012 for declaration, recovery of possession and other reliefs. According to the petitioner, he had filed his appearance through a counsel and had even filed a memo for furnishing copies of the plaint and other documents vide S.R.No.16542 of 2012 on 27.12.2012. Once the petitioner had engaged a counsel, it is the duty of the counsel to receive the papers filed from the office of the Court below and pass them on to the petitioner. It was also open to the petitioner to secure the copies himself by utilising the services of Clerk of the counsel for the petitioner. The alleged sickness of the petitioner was only from 05.07.2013. From December, 2012 till July, 2013, the petitioner had not moved his little finger to get the copies of the plaint and other documents filed by respondent Nos.1 and 2. As per Order VIII

Rule 1 C.P.C., a written statement has to be filed within 30 days from the date of service of summons on the defendant and the time for filing the same can be extended at the discretion of the Court for a further period of 60 days. Since there is no evidence of any illness of the petitioner by April, 2013 (the 90 days period ends in April, 2013), nothing prevented the petitioner from securing documents from the Court and filing written statement in the suit.

18. Although the petitioner has placed reliance on Ex.A-1 – medical certificate, which seems to suggest that he is suffering from high blood pressure and high diabetes resulting in his being advised bed rest, nothing prevented the petitioner from sending any of his family members to his counsel to instruct his counsel to file a written statement. In fact, the illnesses, which the petitioner has alleged, are not such as to prevent the petitioner from 05.7.2013 till 23.4.2014 (till the *ex parte* decree was passed) or till 09.11.2014 when I.A.No.4922 of 2014 was filed, from doing anything.

19. Therefore, this Court is unable to accept the contention of the petitioner that he was prevented by sufficient cause from filing the application to set aside the *ex parte* decree dt.23.4.2014 for a period of 170 days and that the application filed by the petitioner seeking condonation of delay does not show sufficient cause for condonation of the delay.

20. In this view of the matter, I do not find any error in the order passed by the Court below refusing to condone the delay in filing the application to set aside the *ex parte* decree, dt.23.4.2014 in O.S.No.224 of 2012. The Revision is without any merit and is, accordingly, dismissed. There shall be no order as to costs.

21. Miscellaneous Petitions pending, if any, in this Civil

Revision Petition shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 12.8.2015

AMD

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

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