

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

C.R.P. Nos.4775 AND 4776 OF 2010

COMMON ORDER :

Since these two Revisions arise between the same parties out of two different suits in the same Court, they are being disposed of by this common order.

2. These Civil Revision Petitions are filed under Section 115 of Civil Procedure Code, 1908 challenging the order dt.27.09.2010 in I.A.No.605 of 2009 in O.S.No.218 of 2004 and the order dt.27.09.2010 in I.A.No.602 of 2009 in O.S.No.202 of 2004 of the Senior Civil Judge, Karimnagar.

3. The petitioners in both these Revisions are defendants 4 and 6 in O.S.No.202 of 2004 and O.S.No.218 of 2004 on the file of the Senior Civil Judge, Karimnagar.

4. The said suits were filed against them for recovery of money by the 1st respondent herein.

5. Summons in the suits were served on both the petitioners in both suits. They filed written statement in O.S.No.202 of 2004 but did not file written statement in O.S.No.218 of 2004.

6. Issues were framed and trial commenced. PW1 was examined on behalf of the 1st respondent. However none of the defendants cross-examined PW1 and they were absent when the matters were posted on 19.10.2005 and 20.10.2005 respectively for the said purpose.

7. They were accordingly set ex-parte and ex-parte judgments and decrees were passed in O.S.No.202 of 2004 on 19.10.2005 and in O.S.No.218 of 2004 on 20.10.2005.

8. Thereafter, the 1st respondent/decreed-holder filed E.P.No.60 of 2006 in O.S.No.218 of 2004 and E.P.No.61 of 2006 in O.S.No.202 of 2004 to execute the said decrees.

9. After receiving notices in the said EPs, the petitioners herein filed I.A.No.605 of 2009 in O.S.No.218 of 2004 and I.A.No.602 of 2009 in O.S.No.202 of 2004 under Section 5 of the Limitation Act,1963 to condone the delay of 1306 days and 1307 days respectively in filing the petitions to set aside the ex-parte decrees dt.20.10.2005 and 19.10.2005 respectively.

10. In the affidavits filed in support of the said applications, the petitioners contended that they recently came to know about the ex-parte decrees passed in both the suits after they received notice in execution petitions; the suits were filed for recovery of money basing on documents to which they had no concern; the 2nd defendant in the suits by name Vangapalli Sudhakar Reddy approached and informed the petitioners that he would look after the case and asked them to sign some papers; petitioners signed those papers believing the said person, who engaged an advocate; and petitioners never approached any advocate or Court since the 2nd defendant promised to manage and look after the matters. They contended that since the 2nd defendant did not pursue the matter and the advocate engaged on their behalf did not represent them, ex-parte decrees came to be passed. They claimed that they are innocent villagers doing agriculture and are not aware of the Court procedure and on that account they could not pursue the suits. They claim that only in April, 2009 they came to know about the passing of the decrees after receiving notices in the EPs.

11. These applications were opposed by the 1st respondent. He contended that the petitioners cannot say that they came to know about the ex-parte decrees in April, 2009 only after receiving notices in

E.P.No.61 of 2006; the allegations made against the 2nd defendant are not true; petitioners did not care to contest the suits and were deliberately negligent and failed to prosecute the cases with due diligence; and having slept over the matter for more than four years, they cannot now be permitted to have the ex-parte decrees set aside. He also contended that since ignorance of law is not an excuse, the petitioners cannot say that due to lack of knowledge of legal procedure, they did not pursue the suits.

12. By separate orders dt.27.09.2010, the Court below dismissed both applications. It held that when the matters were posted for cross-examination of PW1 on 19.10.2005 and 20.10.2005 respectively, the petitioners did not turn up, there was no representation on their behalf, and so they were set ex-parte and ex-parte decrees were passed against them. It further held that opportunity was given from 26.04.2005 to 20.10.2005 in O.S.No.218 of 2004 and from 06.07.2005 to 19.10.2005 in O.S.No.202 of 2004 to the petitioners to cross-examine PW1, but they did not avail of the said opportunity and failed to cross-examine PW1. It held that it is the bounden duty of the petitioners to pursue the litigation and there was no evidence in support of their version that the 2nd defendant assured to look after the suit affairs, because of which they did not pursue the suit affairs personally.

13. Challenging the same, these Revisions are filed.

14. Counsel for the petitioners contended that the Court below has erred in not condoning the delay in filing the applications to set aside the ex-parte decrees and that since sufficient cause has been shown by the petitioners, it ought to have condoned the said delay and permitted the petitioners to contest the suits on merits and also set aside the ex-parte decrees. He also contended that the 1st respondent is not represented and that the petitioners have deposited the amounts

as directed by this Court at the time when the stay petitions in the revisions were heard. By placing reliance on the judgment of the Supreme Court in **Prakash Chander Manchanda and another v. Smt.Janki Manchanda**^[1], he contended that any decree passed in the absence of the parties has to be treated as an ex-parte decree because the Court below under Order 17 Rule 2 CPC has to proceed in accordance with the mode prescribed under Order 9 CPC. He also placed reliance on the judgment of the Supreme Court in **N. Balakrishnan v. M. Krishnamurthy**^[2] and contended that exercise of power under Section 5 of the Limitation Act, 1963 should be liberal and the words 'sufficient cause' should receive liberal construction if there is a lapse on the part of the persons seeking condonation of delay, unless explanation does smacks of mala fides, the Court should condone the delay, preferably by imposing costs.

15. None appeared for the 1st respondent in both the Revisions, in spite of service of notice.

16. Admittedly, in both suits petitioners have received summons and engaged an advocate but did not cross-examine PW1 and only on their absence on 19.10.2005 in O.S.No.202 of 2004 and on 20.10.2005 in O.S.No.218 of 2004, ex-parte decrees came to be passed. In the affidavit filed in support of the applications for condonation of delay in both the suits, it is the specific contention of the petitioners that they are innocent villagers doing agriculture and not aware of the Court proceedings. But the fact remains that both petitioners admitted that they had engaged an advocate, may be at the instance of the 2nd defendant, and have also not denied receipt of summons in the suits. Therefore, their plea that they came to know about the ex-parte decrees after receiving notices in the EP No.61 of 2006 cannot be believed.

17. As per Article 123 of the Limitation Act, 1963 to set aside a decree passed ex-parte, the time limit fixed is 30 days from the date of decree or where summons were not duly served, when the applicant had knowledge of the decree. Since admittedly summons were served on the petitioners, the period of limitation has to be computed from the date of decree and not from the date of knowledge of the decree.

18. If the petitioners are aware of the filing of the suit and have even engaged a counsel to defend them in the suits but did not participate in the trial, they have only themselves to blame. It is not open to them to blame a co-defendant for their plight. In ***N.Balakrishnan's*** case(2 supra) cited by the counsel for the petitioners, the Supreme court, no doubt, held that there is no presumption that delay in approaching the court and the words "sufficient cause" in [section 5](#) of the Limitation Act, 1963 should receive a liberal construction so as to advance substantial justice. It observed that the length of delay is not matter but acceptable explanation is only criteria. It held that the delay of the shortest range may be uncondonable due to want of acceptable explanation, but in some cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. It held that in every case of delay, there can be some lapse on the part of the litigant concerned and that alone is not enough to turn down his plea and to shut the door against him. It also held that if the explanation is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor, but when there is a reasonable ground to hold that delay was occasioned by the party deliberately to gain time, the Court should act against acceptance of the explanation. It also observed that in cases where the Court is inclined to condone the delay, it may also compensate the opposite party for his loss.

19. In the present case, I am of the opinion that the excuses given by the petitioners for not seeking to set aside the ex-parte decrees within the time permitted by law, are unacceptable. The petitioners were fully

aware of the Court proceedings but intentionally choose to stay away from contesting the same. Their plea that they came to know about the ex-parte decrees only after they received notices in execution petitions cannot be believed. The conduct of the petitioners in blaming the 2nd defendant for their plight, smacks of malafides and cannot be countenanced.

20. Therefore, I am of the considered opinion that the Court below is right in refusing to condone the inordinately long delay of 1306 days and 1307 days in seeking to set aside the ex-parte decrees in both suits.

21. Accordingly, both the Civil Revision Petitions are dismissed. There shall be no order as to costs.

22. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

06th July, 2014
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[\[1\]](#) AIR 1987 Supreme Court 42

[\[2\]](#) AIR 1998 SCC 3222