

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

Civil Revision Petition No.2342 of 2015

Between:

Pulavarthy Subrahmanyam

... Revision Petitioner

And

Patamsetty Saraswatikumar

... Respondent

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DATE OF JUDGMENT PRONOUNCED: 21.08.2015.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

- 1 Whether Reporters of Local newspapers
 may be allowed to see the Judgments?

- 2 Whether the copies of judgment may be
 marked to Law Reports/Journals

- 3 Whether Their Ladyship/Lordship wish to
 see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION NO.2342 OF 2015

ORDER:

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By the order under revision, in I.A.No.936 of 2012 in O.S.No.123 of 2008 dated 11.03.2015, the Court below condoned the delay of 1335 days in filing the petition to set aside the *ex parte* decree dated 06.02.2009.

O.S. No.123 of 2008 was filed by the petitioner herein seeking permanent injunction. The petitioner herein (plaintiff in the suit) took out notice on the respondent to the address mentioned in the sale deed dated 29.11.2005. On the ground that the notice was returned unserved, the petitioner herein took out "paper publication" in Eenadu, Visakhapatnam city edition. As the defendant failed to appear, an ex-parte decree was passed in O.S.No.123 of 2008.

In the order under revision, the Court below held that the publication was made out of jurisdiction where the petitioner resided. This finding was recorded by the Court below without even referring to the specific assertion of the petitioner, in the counter affidavit filed to the I.A, that the paper publication was caused in Visakhapatnam city edition, and not in Bhimunipatnam edition. While the Court below was, no doubt, justified in holding that each day's delay need not be explained, it appears to have been swayed by sympathetic considerations, and has failed to even take into consideration the fact that the respondent did not, in the affidavit filed by him in support of I.A.No.936 of 2012, deny residing at the address furnished in the suit. No details are furnished therein as to when he left the address mentioned in the document dated 29.11.2005, and how long he was away from Visakhapatnam.

While I find considerable force in the submission of Sri G. Rama Gopal, Learned Counsel for the petitioner, that the Court below passed the order under revision, without considering relevant aspects, this Court cannot also ignore the fact the decree, passed in O.S. No.123 of 2008, was an *ex parte* decree. The jurisdiction which this Court exercises, in revision proceedings under Section 115 CPC, against orders passed by the Court below condoning the delay in filing a petition to set aside an *ex parte* decree, is limited. Unlike a Court of appeal, this Court would not take upon itself the task of determining whether or not the delay should be condoned. As an ex-parte decree was passed earlier, the order passed by

the Court below would only result in the Suit being decided on its merits.

Ends of justice would be met if the order passed by the Court below is modified, and the delay is condoned on condition that the respondent herein pays costs of Rs.7,500/-, to the petitioner herein, within two weeks from today. On such costs being paid, and proof of payment being furnished, the suit shall be restored to file and shall be adjudicated in accordance with law.

Sri G. Rama Gopal, Learned Counsel for the petitioner, would submit that, as the petitioner has had the benefit of a decree of injunction for the past four years, the order now passed would result in his being deprived of the order of injunction; and this Court should protect his interests granting an order of injunction till the Suit in O.S.No.123 of 2008 is finally disposed of. It is not clear from the order of the Court below whether or not the petitioner had the benefit of an order of injunction during the pendency of the suit. I consider it appropriate, in such circumstances, to permit the petitioner to file an application before the Court below seeking ad-interim injunction. In case any such application is filed, the Court below shall consider the same in accordance with law. The Civil Revision Petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

Date: 21.08.2015

MRKR