

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY
CIVIL REVISION PETITION Nos.1443 & 1452 of 2015

COMMON ORDER:

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Since the parties in both these cases are same and common issue arises for consideration in these matters, these revision cases are heard together and disposed of by this common order.

The plaintiffs/petitioners herein filed the suit in O.S.No.2119 of 2012 on the file of the VII Junior Civil Judge, City Civil Court, Hyderabad, for injunction simplicitor, and it was decreed *ex parte* on 13.12.2013. The respondents 1 to 4 herein, who are the defendants 1,2,3 and 5 in the suit, filed an application in I.A.No.176 of 2014 under Order IX Rule 13 CPC for setting aside the *ex parte* order. As there is a delay of 47 days in filing the said application, they have also filed an application in I.A.No.71 of 2014 for condonation of delay. The trial Court, by order dated 15.07.2014, allowed I.A.No.71 of 2014 subject to payment of costs of Rs.1,000/- on or before 22.07.2014 and to file proof thereof. Thereafter, by order dated 31.12.2014, the trial Court allowed I.A.No.176 of 2014. Feeling aggrieved by the order in I.A.No.176 of 2014, Civil Revision Petition No.1443 of 2015 is filed, whereas questioning the order in I.A.No.71 of 2014, Civil Revision Petition No.1452 of 2015 is filed.

Heard learned counsel for the parties and perused the impugned orders and other material available on record.

In the application filed to condone the delay in filing the petition to set aside *ex parte* order dated 31.12.2013, it is the case of the defendants that the plaintiffs have given their address as H.No.8-2-293/5/96, Film Nagar, Jubilee Hills, Hyderabad, and also they have shown the same address as the address of the defendants, and also a categorical statement is made by the defendants that they have not received any suit summons from the Court. On the other hand, in the counter affidavit filed by the plaintiffs, it is stated that both parties are residing in the same house, but in different portions. It is further pleaded that the defendants, having received the notice and summons in the suit, appeared and filed vakalath through Advocate Sri P.Nagender Reddy on 31.10.2012 and subsequently when they failed to file written statement, they were set *ex parte* and orders to that effect were passed.

In spite of the aforesaid stand of the plaintiffs in their counter affidavit, without recording any finding on crucial aspects, the trial Court allowed the present I.As mainly on the ground that the defendants deserve an opportunity for proper adjudication of the matter.

The petition filed for condonation of delay is to be considered with all seriousness. It is the specific case of the

defendants that notices were not served on them, but in the counter affidavit filed by the plaintiffs, it is categorically stated that the defendants have admitted that they are residing in another portion of the same building in which the plaintiffs are residing, by showing the same address in the cause title of the petition, and that there was appearance on behalf of the defendants in the suit. If that is the case, without recording a finding as to whether notices were served on the defendants or not and whether there was appearance on behalf of the defendants or not, the trial Court ought not to have allowed I.A.No.71 of 2014 filed for condonation of delay.

So far as I.A.No.176 of 2014 is concerned, the same is allowed in view of the orders passed in I.A.No.71 of 2014.

In that view of the matter, this Court is of the view that both these matters require re-consideration by the trial Court.

Accordingly, these Civil Revision Petitions are allowed setting aside the orders under revision and both these matters are remanded to the trial Court with a direction to consider both I.As afresh and pass appropriate orders in accordance with law, as expeditiously as possible, preferably within a period of six weeks from the date of receipt of a copy of this order. It is made clear that it is open to the trial Court to examine whether notices were served on

the defendants or not.

The miscellaneous petitions, if any, pending in these revisions shall stand closed. No order as to costs.

R.SUBHASH REDDY, J

03.07.2015

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