

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

**CIVIL REVISION PETITION Nos.4877 and 4878 of 2014
and 296 and 349 of 2015**

COMMON ORDER:

The respondents herein filed O.S.No.1871 of 2013 against petitioner in C.R.P.Nos.296 of 2015 and 4878 of 2014, and O.S.No.1872 of 2013 against petitioner in C.R.P.Nos.4877 of 2014 and 349 of 2015 before the II Senior Civil Judge, City Civil Court Hyderabad for their eviction, recovery of arrears of rent, mesne profits and damages.

2. The petitioners, who are defendants in both the suits, entered their appearance through their advocate Sri Muddu Vijay who filed vakalat. They did not choose to file their written statement. So, they are set *ex parte* on 03-06-2014. After recording oral and documentary evidence, *ex parte* decrees were passed against them on 24-06-2014.

3. While the above suits were pending, the respondents had filed I.A.No.1360 of 2013 in O.S.No.1871 of 2013 and I.A.No.1361 of 2013 in O.S.No.1872 of 2013 under Order XV-A r/w Section 151

CPC seeking direction to petitioners to deposit arrears of rent and enhanced rents.

4. The petitioners herein contested the said applications through their counsel Sri Muddu Vijay and after contest, both these applications were allowed on 21-04-2014 directing the petitioners to deposit within 30 days from the said date, the undisputed arrears of rent and also rent for the months of November and December, 2013 and to continue to deposit the same until further orders. On such deposit, the Court below directed the respondents to withdraw the same. This order had not been challenged by petitioners and had become final.

5. Since no written statement was filed on behalf of petitioners and there was also non-compliance with the above orders dt.21-04-2014 in I.A.Nos.1360 and 1361 of 2013, the suits were decreed *ex parte* on 24-06-2014.

6. The respondents filed E.P.No.152 of 2014 in O.S.No.1872 of 2013 and E.P.No.153 of 2014 in O.S.No.1871 of 2013 for execution of the decrees obtained by them in the said suits.

7. They also filed E.A.Nos.275 and 277 of 2014 in E.P.No.152 of 2014 and E.A.Nos.278 and 279 of 2014 in

E.P.No.153 of 2014 seeking direction from the executing Court to break open the locks and for police aid.

8. The petitioners filed I.A.No.578 of 2014 in O.S.No.1871 of 2013 and I.A.No.577 of 2014 in O.S.No.1872 of 2013 under Section 5 of the Limitation Act, 1963 to condone the delay of 130 days in filing petitions under Order IX Rule 13 CPC to set aside the *ex parte* decrees dt.24-06-2014 in both the suits and also applications under Or.IX R.13 CPC to set aside the *ex parte* decrees.

9. The petitioners also filed E.A.No.282 of 2014 in E.P.No.153 of 2014 in O.S.No.1871 of 2013 and E.A.No.283 of 2014 in E.P.No.152 of 2014 in O.S.No.1872 of 2013 seeking stay of the execution petitions pending disposal of the petitions under Order IX Rule 13 CPC and I.A 577 and 578/2014 filed under Section 5 of the Limitation Act, 1963 (for short 'the Act').

10. In the affidavits filed in support of I.A 577 and 578/2014 , the petitioners contended that they engaged Sri Muddu Vijay, Advocate for defending them in the above suits; but since they were not satisfied with his work, they sought 'No Objection' Vakalat from him and engaged another advocate to pursue their cases; they

were regularly in touch with their new advocate and he assured them not to worry about the cases; and so they were busy with their tent house shop and mechanic shop respectively relying on the assurance given by the new advocate; they did not receive any notice in the E.Ps.; and were shocked and surprised when they came to know on 27-11-2014 when the bailiff of the Court came to the E.P. schedule properties about the orders of eviction passed against them and pendency of the E.Ps. They contended that they are illiterate persons, not well acquainted with the legal procedure, that they believed their advocate's assurances and on account of the conduct of the said advocate, they cannot be made to suffer. They claimed that they again engaged a new advocate by name Sri B.Srikanth Kumar, came to know about the true facts and then filed the applications to condone the delay in seeking to set aside the *ex parte* decrees, to set aside the same and also to stay all further proceedings in the respective E.Ps.

11. Counter affidavit was filed by respondents contending that the allegations made by petitioners were not true. They contended that petitioners initially engaged Sri Muddu Vijay, Advocate and filed vakalat and counter in the applications I.A.Nos.1360 and 1361 of 2013 under

Order XV-A CPC; later they engaged Sri Sham S. Agarwal, Advocate and filed a detailed counter in the applications under Order XV-A CPC filed by respondents; the matter underwent number of adjournments; I.A.Nos.1360 and 1361 of 2013 came to be allowed on 21-04-2014; but petitioners failed to deposit the rents and none was representing the matter on their behalf. They contended that the Court below posted the matter for evidence, recorded the evidence, marked documents filed on behalf of respondents and then decreed the suit on 24-06-2014 against petitioners giving them 2 months time to vacate the premises. They alleged that the petitioners had knowledge about the proceedings but deliberately failed to appear before the Court below and did not file any applications. They therefore prayed that these applications be dismissed.

12. The Court below on 15-12-2014 dismissed E.A.No.282 of 2014 in E.P.No.153 of 2014 in O.S.No.1871 of 2013 and E.A.No.283 of 2014 in E.P.No.152 of 2014 in O.S.No.1872 of 2013 by separate orders. It held that it had no power to stay the execution of a decree passed by it and that Order XXI Rule 26 CPC relied upon by the petitioners applies seeking stay of the execution petitions only entitles the Court to which a

decree has been sent for execution, to stay the execution of such decree for a reasonable time to enable the judgment debtor to apply to the Court by which the decree was passed or to any Court having appellate jurisdiction in respect of a decree or the execution thereof and obtain an order to stay the execution. But since it was not only the executing Court but also the Court which passed the decrees Order XXI Rule 26 CPC does not apply. It held that even Order XXI Rule 29 CPC would not apply because that provision would be attracted only if there are 2 simultaneous proceedings in one Court i.e. proceedings in execution of the decree in a Court started at the instance of the decree holder against the judgment debtor and a suit at the instance of the same judgment debtor against the holder of the decree of the Court, but such a situation did not exist here.

13. On 22-12-2014 it dismissed I.A.No.577 of 2014 in O.S.No.1872 of 2013 and I.A.No.578 of 2014 in O.S.No.1871 of 2013 by separate orders. It held that the affidavits filed by petitioners seeking condonation of delay in seeking to set aside the *ex parte* decree did not disclose any sufficient cause or reason to condone the delay in filing the applications under Order IX Rule 13 CPC; the record reveals that the petitioners received suit

summons and engaged Sri Muddu Vijay, Advocate, who filed vakalat on 03-03-2014; but the petitioners did not file written statement within the stipulated time of 30 days and there was no representation on behalf of petitioners thereafter; the petitioners were set *ex parte* on 03-06-2014 for not filing written statement; and thereafter decree was passed on 24-06-2014 against them. It further held that both petitioners filed counters in I.A.Nos.1360 and 1361 of 2013 through Sri M.Vijay, Advocate but later engaged Sri Sham S.Agarwal, Advocate with 'no objection' vakalat; the said applications were allowed on 21-04-2014 and the petitioners were directed to deposit the undisputed arrears of rent and also rents for the months of November and December, 2013; these directions were also not complied with by petitioners; and therefore the defence of the petitioners is deemed to be struck off. It also noted that the petitioners have now started resisting the execution petitions through a different counsel Sri B.Srikanth Kumar and they had also filed a suit for injunction against respondents and also C.M.As. and so they were aware of the present suit litigation.

14. Challenging the order dt.15-12-2014 in E.A.No.282 of 2014 in E.P.No.153 of 2014 in O.S.No.1871 of 2013 and E.A.No.283 of 2014 in E.P.No.152 of 2014 in

O.S.No.1872 of 2013, the petitioners filed C.R.P.Nos.4878 of 2014 and 4877 of 2014.

15. Challenging the orders dt.22-12-2014 in I.A.No.578 of 2014 in O.S.No.1871 of 2013 and I.A.No.577 of 2014 in O.S.No.1872 of 2013 the petitioners filed C.R.P.Nos.296 of 2015 and 349 of 2015.

16. The learned counsel for petitioners mainly contended that the Court below had erred in dismissing I.A.Nos.578 and 577 of 2014 and E.A.Nos.282 and 283 of 2014; the Court below ought to have granted stay of execution of the respective decrees in the suits under Order XXI Rule 26 CPC; and also condoned the delay of 130 days in seeking to set aside the *ex parte* decrees and set aside the *ex parte* decrees. He contended that petitioners had shown sufficient cause for not being present on the dates when they were set *ex parte* and also when *ex parte* decrees were passed against them; that their counsel Sri Sham S.Agarwal had assured them nothing to worry about the cases and they were misled by the said Advocate; and therefore the Revisions be allowed. He also placed reliance on the judgments of the Supreme Court in **M/s.Mangat Singh Trilochan Singh through Mangat Singh (Died) by L.Rs. and others Vs. Satpal**^[1], **G.P.Srivastava Vs. R.K. Raizada and**

others^[2] and Vedabai alias Vijayanatabai Baburao

Patil Vs. Shantaram Baburao Patil and others^[3]. He

further contended that on 24-04-2015 when the matters had came up for admission before this Court, it had directed the petitioners to deposit Rs.6,00,000/- in both the suits on or before

05-06-2015 and if petitioners fail to deposit, the respondents would execute the decrees; the C.R.Ps. were coming up for admission on 25-06-2015 and till then interim orders granted therein remained operative; both the petitioners had deposited Rs.3 Lakhs each to the credit of both the suits; and therefore this Court should allow the Revisions and give an opportunity to petitioners to contest the suits on merits.

17. Sri D.Prakash Reddy, learned Senior Counsel representing Sri M.A.K. Mukheed, learned counsel appearing for respondents contended that the petitioners had not shown any sufficient cause for condonation of delay; they had neglected to comply with the orders passed under Order XVI-A CPC to deposit the arrears of rents and also future rents; they were aware of the suit proceedings and had engaged 3 counsel to contest the same; the Court below had rightly rejected their

applications for condonation of delay in seeking to set aside the *ex parte* decrees as well as to stay the execution of the decrees invoking Order XXI Rule 26 CPC; and therefore the Revisions be dismissed.

18. I have noted the submissions on both sides.

19. There is no dispute that both the petitioners had engaged a counsel Sri Muddu Vijay after receiving summons in both the suits but did not file written statements therein. They had also filed counters in I.A.No.1360 of 2013 in O.S.No.1871 of 2013 and I.A.No.1361 of 2013 in O.S.No.1872 of 2013 (filed by respondents under Order XV-A CPC) through the said counsel and contested the same and after suffering adverse orders therein on 21-04-2014, they neither complied with the said orders nor challenged the same. In view of the non-compliance with the orders under Order XV-A CPC, even if the petitioners had filed written statements of defence in the respective suits, such a defence would have been liable to be struck off.

20. I do not agree with the contention of the learned counsel for petitioners that because no written statements had been filed by petitioners, penalty of striking off defence for non-compliance with the orders under Order

XV-A CPC, is not attracted. The petitioners cannot claim to be in a better position by not filing written statements in the suits prior to orders under Order XV-A CPC were passed or even thereafter. Once they failed to comply with the directions contained in the orders passed by the Court below in the applications under Order XV-A CPC filed by respondents, it would be unjust to condone the delay in seeking to set aside the *ex parte* decrees, allow the applications to set aside the *ex parte* decrees and permit them to file written statements at this stage. If this is allowed, it would result in the petitioners successfully circumventing the provisions Order XV-A CPC, which are intended to ensure that landlords are not deprived of rents or arrears of rents pending disposal of the suits filed by them against their tenants since such suits are likely to take considerable time for their disposal.

21. No doubt the Supreme Court of India in **Vedabai alias Vijayanatabai Baburao Patil** (3 supra) had held that in exercise of discretion under Section 5 of the Limitation Act, 1963 the Courts should adopt a pragmatic approach and delays of short period are to be condoned in contrast to cases where delay is inordinate and that in cases where delays are short, there is no consideration of prejudice to other side. In my opinion, this principle

cannot be applied in a situation where in a suit for eviction by landlord against a tenant, the tenant having suffered an order under Order XV-A CPC does not comply with it. This is because of the reasons explained in the above paragraphs.

22. It is also no doubt true that in **G.P.Srivastava** (2 supra), the Supreme Court has held that in exercise of power under Order IX Rule 13 CPC, an *ex parte* decree passed against a defendant can be set aside upon satisfaction of the Court that he was prevented by a sufficient cause from appearing when the suit was called on for hearing and that the words “*was prevented by any sufficient cause from appearing*” must be liberally construed to enable the Court to do complete justice between parties, particularly when no negligence or inaction have been imputable to the erring party. This principle also cannot be applied to the present case for the same reasons as mentioned above.

23. In fact, according to me, the petitioners cannot claim that they have even shown sufficient cause either for condonation of delay under Section 5 of the Act for setting aside the *ex parte* decrees passed against them for the reason that both of them had engaged 3 different counsel after receiving summons in the suit and were aware of the

suit proceedings. It is also not disputed by petitioners that they had filed separate suits for injunction against respondents and also C.M.As. It is not open to petitioners to blame their advocate conveniently and seek to get *ex parte* decrees set aside and contest the suits having been negligent in complying with the orders passed under Order XV-A CPC against them in both the suits.

24. The decision in **M/s.Mangat Singh Trilochan Singh** (1 supra) cited by the learned counsel for petitioners also does not apply because in that case the provisions of Order XV Rule 5 CPC as applicable to the State of Punjab and Haryana in Chandigarh is considered. That provision is worded differently from Order XV-A CPC applicable in the State of Telangana and the State of Andhra Pradesh. In that case, under Order XV Rule 5 CPC, as applicable to the State of Punjab, Haryana and Chandigarh, the defendant had to deposit, at or first hearing of the suit, the entire amount admitted by him and on failure to do so, the defence is liable to be struck off under sub-section (2) thereof. But before striking off defence, the Court is permitted to consider any representation made by defendant, provided such representation is made by him within 10 days of the first hearing or, of the expiry of the week referred to in sub-section (1) of Order XV Rule 4

CPC. The Supreme Court in the above case held that the Court had discretion in the matter of striking down of defence and the said power is to be exercised with due regard to the facts and circumstances of each case. In order XV-A CPC, as applicable in the State of Telangana and the State of Andhra Pradesh, however, any default committed by a defendant in making deposit as directed therein mandates the Court to strike off the defence. Therefore, the Court has no choice but to strike off the defence if there is default committed by defendant in making such deposit as per the provisions of Order XV-A CPC.

25. I am also of the opinion that the Court below was right in holding that the provisions of Order XXI Rule 26 CPC have no application and that the proceedings for execution of the decrees cannot be stayed in the instance case because the Court which is executing the decrees also happens to be the same Court which passed the decrees.

26. The deposit of amounts made by petitioners pursuant to the interim orders granted by this Court in both Revisions in June 2105 does not come to the aid of both petitioners because such deposit ought to have been made by them within 30 days from 21.4.2014 and the

Court could have extended this time by a maximum of 15 days only under Or.XV-A CPC and not more. I therefore do not find any merit in these Revisions and they are accordingly dismissed. No costs.

27. The deposit of amounts made by petitioners pursuant to the interim orders granted by this Court in both Revisions shall however be taken into account by the Court below while deciding the execution petitions filed by respondents for recovery of arrears of rents, mesne profits etc., and the same may be utilized for satisfaction of the decrees passed by the Court below in both suits.

28. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 10-07-2015

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[\[1\]](#) AIR 2003 SC 4300

[\[2\]](#) (2000) 3 SCC 54

[\[3\]](#) 2001(9) SCC 106