

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.3496 of 2014

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.21.07.2014 in I.A.No.499 of 2014 in O.S.No.310 of 2006 on the file of the Principal Junior Civil Judge, Narasaraopet.

2. The petitioner herein is the plaintiff in the suit.
3. He filed the suit against respondents to cancel a registered sale deed dt.27.11.2004 purported to have been executed by 1st respondent in favour of 2nd respondent.
4. The 1st respondent herein, who was 2nd defendant in the suit, was set *ex parte* on 19.02.2007.
5. In April, 2014, i.e., seven years after he had been set *ex parte*, he filed I.A.No.499 of 2014 under Order 9 Rule 7 C.P.C. to set aside the order dt.19.02.2007 setting him *ex parte*.
6. In the affidavit filed in support of this application, it is stated by 1st respondent that 2nd respondent made him believe that he would contest the suit on his behalf. So he engaged the same Advocate, and 2nd respondent filed written statement through him and trusting him he did not take part in the proceedings in the suit. He alleged that he

came to know that he was set *ex parte* on 19.02.2007 and the 2nd respondent did not inform him about the stage of the suit.

7. No application for condonation of delay of seven (07) years in seeking to set aside the order dt.19.02.2007 setting the petitioner *ex parte*, had been filed.

8. Counter-affidavit was filed by 1st respondent opposing the application and contending that evidence of 1st respondent was already concluded and the suit was coming up for evidence of 1st defendant/2nd respondent, and at such a belated stage, this application ought not to be entertained. It was contended that the suit summons were served on 1st respondent and he was directed to appear before the Court on 19.02.2007 and he failed to appear either in person or through his Advocate on that day, and so he was set *ex parte*; that due to non-cooperation of respondent nos.2 to 5 and petitioner, the suit has got protracted; and that respondent nos.1 and 2 were hand-in-glove, and are only intending to drag on the proceedings.

9. By order dt.21.07.2014, the Court below allowed the said application stating that "*in the circumstances mentioned in the petition affidavit and in view of submission of the counsel for petitioner, it is a fit case to allow the petition by imposing certain conditions in order to*

avoid further delay in the interest of justice". It thus allowed the said I.A. with costs of Rs.300/-.

10. Challenging the same, the present Revision is filed.

11. Heard Sri K.R. Koteswara rao, counsel for petitioner; Sri Nimmagadda Satyanarayana, counsel for 1st respondent; and Sri M.V. Suresh, counsel for respondent nos.3 to 5.

12. The counsel for petitioner contended that the 1st respondent had been set *ex parte* as long back as on 19.02.2007 and this application to set aside the said order was filed in April, 2014, i.e., more than seven years later; no application for condoning the delay in seeking to set aside the order dt.19.02.007 had been filed; that the order passed by the Court below is a cryptic and unreasoned order; and therefore, deserves to be set aside.

13. The counsel for 1st respondent however supported the order passed by the Court below and contended that since the costs had been awarded to compensate the petitioner; this Court should not interfere with the impugned order.

14. I have noted the submissions of both sides.

15. Order 9 Rule 7 C.P.C. states :

"7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.

Where the Court has adjourned the hearing of the suit ex parte and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance."

16. Therefore, unless the cause is shown by defendant who had been set *ex parte* for his previous non-appearance, an application under Order 9 Rule 7 C.P.C., cannot be allowed.

17. Except stating that the 2nd respondent/1st defendant had promised to take care of the litigation on his behalf also, the 1st respondent has not stated anything in the affidavit filed in support of I.A.No.499 of 2014. He did not deny that he received the summons in the suit which indicated the date on which he should file a written statement, and that he failed to file a written statement within the time specified therein. The reason given by him, cannot be said to be a good cause entitling the 1st respondent to have the order dt.19.02.2007 setting him *ex parte*, set aside.

18. Also, it was the bounden duty of 1st respondent to file an application under Section 5 of the Limitation Act, 1963 explaining the cause for filing I.A.No.499 of 2014 with a delay of seven (07) years and two (02) months. Therefore, the court below ought not have allowed the said I.A. by passing the above cryptic order.

19. Therefore, the Civil Revision Petition is allowed

and the order dt.21.07.2014 in I.A.No.499 of 2014 in O.S.No.310 of 2006 on the file of the Principal Junior Civil Judge, Narasaraopet is set aside. No order as to costs.

20. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 25.08.2015

Ndr/*