

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

C.R.P.No.4549 of 2013

ORDER:

Heard Sri Chalakani Venkat Yadav, learned counsel for the petitioner and Sri Maheswar Rao Kunche, learned counsel for the respondents.

2. This Revision Petition is filed challenging the order dt.10-09-2013 in I.A.No.186 of 2013 in O.S.No.3323 of 2010 of the VII Junior Civil Judge, City Civil Court, Hyderabad.

3. Petitioner herein is 3rd defendant in the above suit. The 1st respondent herein filed the suit against the petitioner for recovery of money. The said suit was decreed *ex parte* on 10-04-2012. Thereafter, the petitioner filed I.A.No.186 of 2013 under Section 5 of the Limitation Act, 1963 on 13-08-2013 to condone the delay of 248 days in filing the petition under Order 9 Rule 13 CPC to set aside the *ex parte* decree and also another application to set aside the *ex parte* decree.

4. In the affidavit filed in support of the said application, the petitioner claimed that he came to know about the decree

dt.10-04-2012 in the suit on 08-11-2012 when the petitioner's salary was attached by his employer, AP State Road Transport Corporation; that there is no iota of truth in the entire allegations in the suit; that the petitioner had not received any summons or notice from the Court in the suit or in the E.P.; and 1st respondent played fraud before the Court by publishing summons in the 'News Line' daily newspaper on 14-02-2012 and that the said newspaper is not widely read. Certain other contentions on merits were also raised.

5. No counter affidavit was filed opposing this application.

6. By order dt.10-09-2013, the Court below dismissed I.A.No.186 of 2013. It held that summons were published in 'News Line' daily newspaper on 21-03-2012 against the petitioner; that the petitioner came to know about suit proceedings on 08-11-2012; no reasons were assigned by the petitioner why he waited till 13-08-2013 to file the present application; and since the petitioner had been negligent in taking steps to set aside *ex parte* decree, the petitioner is not entitled to any indulgence.

7. Challenging the same, this Civil Revision Petition is filed.

8. Learned counsel for the petitioner contended that the summons in the suit had not been served on the petitioner and publication was made in a

newspaper, which had no circulation in the area, under Order 5 Rule 20 CPC by the respondent; that the petitioner came to know about suit proceedings only on 08-11-2012 when his salary was attached; and therefore, the delay of 248 days in seeking to set aside *ex parte* decree be condoned.

9. Learned counsel for 1st respondent on the other hand refuted these contentions. He contended that no reason has been assigned by the petitioner for the delay in filing the application under Order 9 Rule 13 CPC on 13-08-2013 when admittedly the petitioner had notice of the E.P. proceedings and the suit proceedings on 08-11-2012 itself, and in the absence of any valid explanation from the petitioner, the Court below was right in dismissing I.A.No.186 of 2013.

10. There is no dispute that *ex parte* decree in the suit was passed by the Court below on 10-04-2012. According to the affidavit filed by the petitioner in I.A.No.186 of 2013, on 08-11-2012 he received an office order from the Depot Manager, APSRTC, Midhani Depot, Hyderabad that recovery of sum of Rs.76,201/- has been ordered from his salary by Court attachment and that the Court attachment was made vide order dt.03-09-2012 in E.P.No.156 of 2012 in O.S.No.3323 of 2010. So petitioner ought to have immediately taken steps to set aside the *ex parte* decree dt.10-04-2012 on coming to know of it on 08-

11-2012, but instead of doing so, he waited for 248 days in filing this application till 13-08-2013. No valid reason has been assigned by the petitioner to explain this delay.

11. Therefore, the petitioner can be said to have acted negligently in taking steps to have the *ex parte* decree set aside. Since the petitioner has not been able to show sufficient cause for condoning the said delay, I am of the opinion that the Court below has rightly dismissed I.A.No.186 of 2013.

12. I therefore do not find any merit in the Revision Petition and the same is accordingly dismissed. No costs.

13. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 25-06-2015

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