

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

CIVIL REVISION PETITION No.5274 of 2013

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ORDER:
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This Civil Revision Petition is filed challenging the order

dt.20-11-2013 in I.A.No.930 of 2012 in I.A.No.215 of 2012 in O.S.No.97 of 2009 of the Senior Civil Judge, Pithapuram.

2. The petitioner herein is defendant in the suit.

3. The respondent filed the suit against petitioner on the basis of a mortgage. Summons in the suit were served on petitioner. She entered appearance on 17-08-2009 through an advocate and later engaged another advocate, who filed vakalat on her behalf on 15-10-2009. She filed written statement on 19-10-2009. P.W.1 was examined in chief on 10-03-2011 and since 23-06-2011, the petitioner did not cross-examine P.W.1. Therefore the petitioner was set *ex parte* on 27-06-2011 and preliminary decree in the suit was passed on that day. Thereafter the respondent filed application for passing final decree on 19-01-2012. The petitioner received summons therein on 22-03-2012.

4. The petitioner filed I.A.No.930 of 2012 under Section 5 of the Limitation Act, 1963 to condone the delay of 399 days in seeking to set aside the *ex parte* decree. In the affidavit filed in support of this application, she contended that she received only Rs.40,000/- and had also paid amounts towards interest and principal, which were endorsed on the mortgage deed. She alleged that respondent had suppressed the original deed and filed only copy thereof in the suit, and if the original is produced, it will show the endorsements on the same and her liability would be only Rs.10,000/- after deducting the payments recorded on the original mortgage deed. She contended that the respondent had promised to claim only the actual amount due i.e. about Rs.10,000/- only, that she believed the respondent and did not contest the suit, but the respondent cheated her and did not adhere to her promise.

5. Counter affidavit was filed by respondent opposing this application. The respondent denied that any payments were made by petitioner towards interest and also principal and that they were endorsed on the mortgage deed. She denied that the original mortgage deed was suppressed and only copy thereof was filed in the suit. She also denied that she made the petitioner to

believe that she would only claim decree for Rs.10,000/- and alleged that no such discussion took place between them. She opposed the condonation of delay of 399 days to set aside the *ex parte* decree and contended that the petitioner was in the habit of changing advocates from time to time and this application is filed only to drag on the proceedings.

6. By order dt.20-11-2013, the Court below dismissed the said I.A. It held that the petitioner was aware of the suit proceedings and had even filed a written statement therein, but the petitioner has not offered any explanation why she became *ex parte*. It further held that the petitioner had received summons in the final decree petition on 20-03-2012 itself and present application had been filed on 02-08-2012 and no reason had been assigned by petitioner to explain this delay.

7. Challenging the same, this Revision is filed.

8. Learned counsel for petitioner contended that the petitioner had suffered several misfortunes and fraud was played by respondent to obtain the *ex parte* decree on 27-06-2011. He also stated that on 06-11-2014 this Court had granted an order staying

further proceedings in drawing of the final decree on condition of the petitioner depositing 50% of the amount mentioned in the preliminary decree on or before 15-12-2014, but due to certain difficulties the petitioner could not comply with the same. The learned counsel for petitioner stated that in view of non-compliance with the said interim order, the property belonging to petitioner has been put up for sale and therefore the matter may be viewed sympathetically and impugned order be set aside.

9. The facts narrated above clearly indicate that petitioner had knowledge of the suit proceedings. She however did not cross-examine P.W.1. So she was set *ex parte* on 27-06-2011 and preliminary decree was passed on that day. The respondent had filed petition for passing final decree on 19-01-2012. The petitioner received summons therein on 22-03-2012 and later filed the present application on 02-08-2012 to condone the delay of 399 days in seeking to set aside the *ex parte* decree. The story pleaded by petitioner that she was persuaded by respondent not to contest the suit proceedings because the respondent promised to get a decree only for Rs.10,000/- cannot be accepted, particularly, when respondent had denied any such action on her part and no evidence is adduced in support of such a plea by petitioner. It is clear that the petitioner was negligent in

defending the suit and only after application for final decree was filed, she has filed this application to delay the execution of the decree in the suit. Although this Court had shown her some indulgence by passing the order on 06-11-2014 staying the proceedings in the final decree Petition on condition of the petitioner depositing 50% of the amount mentioned in the preliminary decree on or before 15-12-2014, this was not complied although 8 months have elapsed since then. The said order itself stated that if default is committed by petitioner, the trial Court can proceed with the final decree petition and pass orders without any further reference to this Court.

10. In view of the above circumstances, I am of the opinion that the petitioner does not deserve any indulgence from this Court for condonation of the inordinately long delay of 399 days in filing the petition to set aside the *ex parte* decree.

11. I therefore do not find any merit in the Revision and it is accordingly dismissed. No costs.

12. As a sequel, miscellaneous petitions pending if any, shall stand dismissed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 09-07-2015

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