

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

CIVIL REVISION PETITION No.4417 of 2014

ORDER:

This Civil Revision Petition is filed questioning the order

dt.12-11-2014 in I.A.No.20 of 2014 in O.S.No.57 of 2007 of the Senior Civil Judge, Rayachoty.

2. Heard the learned counsel for petitioner. None appears for respondents even though notices to respondents have been served by R.P.A.D. and proof of such service has been filed vide U.S.R. No.864 of 2015 dt.20-02-2015.

3. The petitioner is defendant in the suit. The suit was filed for specific performance of an agreement of sale by respondents against the petitioner. The suit was decreed exparte on 01-05-2008.

4. The respondents then filed E.P.No.28 of 2008 for execution of decree. In that application also, the petitioner has been set exparte and the registered sale deed was executed in respect of the plaint schedule property through the process of Court, and E.P. was closed on 25-01-2010. Thereafter E.P.No.13 of 2011 was filed for delivery of property and it is pending.

5. At that stage, the petitioner filed I.A.No.20 of 2014 under Section 5 of the Limitation Act, 1963 (for short

‘the Act’) to condone the delay of 1138 days in filing petition under Order IX Rule 13 CPC.

He contended that although originally he was a resident of Rayachoty, in 2006, he migrated to Chanchalguda, Hyderabad and was residing at house bearing Door No.16-8-13/7; that a household card was issued to him by the Incharge DPL, Chanchalguda, Hyderabad; in 2009 he secured employment as house driver at Kuwait and was residing there since then till 07-06-2011; on his return to India, he again started to reside at same house at Chanchalguda, Hyderabad; on 09-07-2011 he returned to Rayachoty, his native place on courtesy visit, and then he heard about the proceedings in the suit and the decree being passed against him. Petitioner contended that he did not execute the suit agreement of sale dt.19-02-2004 in favour of respondents at any time agreeing to sell the plaint schedule property nor did he receive any consideration under it. He contended that the said agreement of sale is a forgery and is not true, valid and binding on him and it is unenforceable. He alleged that taking advantage of his absence from Rayachoty from 2006 till 09-07-2011, this agreement of sale was fabricated by respondents and the decree obtained therefore does not bind him. He also stated that he was also not served any summons in the suit or notice in the E.P. proceedings and is not aware of the institution of suit

against him or of the Execution proceedings. Although according to petitioner, since he came to know about the said fact on 09-07-2011 only, his application to set aside the exparte decree is within time, but by way of abundant caution, he filed the petition under Section 5 of the Limitation Act, 1963 to condone the delay of 1138 days for filing the petition under Order IX Rule 13 CPC. He therefore prayed that the said delay be condoned for the above reasons.

6. Counter affidavit is filed on behalf of respondents denying the allegation of the petitioner that he migrated to Chanchalguda, Hyderabad in 2006 and was residing at Hyderabad since then. They denied that he went to Kuwait and returned to India on 07-06-2011 and then came to know about the Court proceedings. They denied that they intentionally gave a false address and obtained exparte decree on 01-05-2008 and a registered sale deed in E.P.No.28 of 2008. They allege that after service of summons and notice to petitioner only, exparte decree was passed and sale deed was executed in their favour. They contended that since the suit is decreed and E.P. is closed, the application to reopen the suit and E.P. is not maintainable and is liable to be dismissed. They denied that the petitioner was not aware of the proceedings in the suit and that he came to know about the same on 09-07-2011.

7. Before the Court below, the petitioner marked Ex.P-1 Household card issued by the Incharge DPL, Chanchalguda, Hyderabad on 02-03-2006 indicating that he was residing at the address at Door No.16-8-13/7, Chanchalguda, Ward No.16, Circle-I, Hyderabad.

8. By order dt.12-11-2014, the Court below dismissed the said I.A. on the ground that the petitioner had not filed any residential certificate from the authority concerned to show that he was residing in Chanchalguda, Hyderabad from the year 2006 till 2009; although he filed Ex.P-1, it was denied by respondents; and therefore, the petitioner should have examined the author of Ex.P-1 to say that the said household card is a genuine one and issued by him. It held that the non-examination of the said issuing authority by petitioner is fatal and that an adverse inference is therefore drawn against the petitioner. It also held that the petitioner had failed to file his passport or Visa to prove that he is in Kuwait between 2009 to 2011 and that there is no bonafide reason assigned by petitioner to condone the inordinately long delay of 1138 days.

9. Challenging the same, this Revision is filed.

10. The learned counsel for petitioner contended that the Court below erred in dismissing the application filed by petitioner for condoning the delay in

filing application under IX Rule 13 CPC; that the duration of delay is not relevant, and satisfactoriness of the explanation for the delay should be looked into; that the insistence of the Court below that the author of Ex.P-1 household card needs to be examined, is perverse; although the petitioner did not file the passport or Visa to prove that he had been to Kuwait, the reason why he could not do so was that the passport had been given for renewal.

11. I have considered the submissions of the learned counsel for petitioner.

12. The point for consideration is: Whether the petitioner's application for condonation of delay of 1138 days in filing the petition under Order IX Rule 13 C.P.C. ought to have been allowed by the Court below or not?

13. The expression "sufficient cause" used in Section 5 of the Act, has been subject to interpretation by the Apex Court in a number of decisions. The Apex Court held that Court should adopt a liberal approach and that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. It has held that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala

fides. In **B. Madhuri Goud Vs. D.Damodar Reddy**^[1], the Supreme Court followed its earlier decisions in **N.Balakrishnan Vs. M.Krishnamurthy**^[2], **P.K. Ramachandran Vs. State of Kerala**^[3] and **Maniben Devraj Shah Vs. Municipal Corpn. of Brihan Mumbai**^[4]

and declared that rules of limitation are not meant to destroy the rights of parties and they are meant to see that parties do not resort to any dilatory tactics, but seek their remedy promptly. It held that the object of providing a legal remedy is to repair the damage caused by reason of legal injury and the law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. It held that due to efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts and so lifespan must be fixed for each remedy; that is why the Law of Limitation is founded on public policy; that rules of limitation are not meant to destroy the rights of the parties; and that the idea is that every legal remedy must be kept alive for a legislatively fixed period of time. It declared that length of delay is no matter, acceptability of the explanation is the only criterion. It also held that if the trial Court refuses to condone the delay, the superior court is free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own

findings even untrammelled by the conclusion of the lower court. It held that if the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting the case, then it would be a legitimate exercise of discretion not to condone the delay.

14. In **G.P. Srivastava v. R.K. Raizada**^[5], it was laid down by the Supreme Court as under :

“Under Order 9 Rule 13 CPC an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any “sufficient cause” from appearing when the suit was called on for hearing. Unless “sufficient cause” is shown for non-appearance of the defendant in the case on the date of hearing, the court has no power to set aside an ex parte decree. The words “was prevented by any sufficient cause from appearing” must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as an elastic expression for which no hard and fast guidelines can be prescribed. The courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The “sufficient cause” for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time. If “sufficient cause” is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the court

immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits.”

15. Keeping the above principle in mind, I now consider whether sufficient cause has been shown by petitioner for condoning the delay in filing application under Order IX Rule 13 CPC and acceptability of the explanation raised by the petitioner.

16. It is the plea of the petitioner that he was not served summons in the suit or notices in the E.P. proceedings. Except raising a plea in the counter affidavit filed in the I.A. that summons in the suit were served on petitioner, no evidence in that regard has been let in by respondents. It is pertinent to note that in the judgment in the suit, copy of which was filed by petitioner, there is no finding that summons in the suit were served on petitioner/defendant. In the impugned order also the Court below nowhere states that summons in the suit or notices in the E.P. were served on the petitioner at the Rayachoty address shown as his place of residence in the plaint and in the E.P by the respondents/plaintiffs.

17. The contention of petitioner is that he moved to Hyderabad and was staying at Chanchalguda. In support of the said plea, he relied upon Ex.P-1 household card issued by the Incharge D.P.L. The said document

indicates that petitioner was residing since 2006 in Hyderabad at house bearing Door No.16-8-13/7 in Chanchalguda, Hyderabad. Admittedly, respondents have shown the address of petitioner at Rayachoty in the suit filed by them. They have not shown him as resident of above address of Chanchalguda, Hyderabad.

18. In my opinion, Ex.P-1, the Household register issued by the State Civil Supplies department officials, who are public servants in the discharge of their official duty, is a public document. So entries therein about the place of stay of the petitioner i.e at Hyderabad are relevant under Sec.35 of the Evidence Act,1872. So there was no necessity for petitioner to examine the author of Ex.P-1. The Court below should have accepted the same instead of rejecting it on the ground of non-examination of author of Ex.P-1. The view of the Court below that the petitioner should have filed some other document such as residential certificate from some authority to show that he was residing at Chanchalguda from 2006 to 2009, cannot be accepted in the light of Ex.P-1, which in my opinion, is sufficient to prove that petitioner was residing in Chanchalguda, Hyderabad from 2006.

19. Once this document is accepted as evidence of petitioner not being a resident of Rayachoty and resident of Hyderabad, it has to be presumed that the suit (initiated against him at Rayachoty showing the

Rayachoty address and which was decided by setting him ex parte), was decided without his knowledge of it. The burden then shifts to respondents/plaintiffs to show that the petitioner/defendant had notice of the litigation at Rayachoty, but no evidence in that regard had been led by them. Even in the counter affidavit filed by them, except denying the contention of petitioner, they have not provided any material indicating that petitioner was aware of the litigation at Rayachoty.

20. In this view of the matter, the explanation furnished by petitioner for the delay in filing the application under Or.9 R.13 CPC is acceptable and satisfactory and it has to be held that the petitioner has shown sufficient cause for condoning the said delay.

21. I reject the plea of respondents that the application for condonation of delay is not maintainable because suit has been decreed and execution of the decree has also taken place and the E.P. is closed.

22. In this view of the matter, the Civil Revision Petition is allowed; the order dt.12-11-2014 in I.A.No.20 of 2014 in O.S.No.57 of 2007 of the Senior Civil Judge, Rayachoty, is set aside; and the said application is allowed. No costs.

23. As a sequel, all miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-03-2015

Note: Issue C.C. by 10-03-2015

B/o.

vsv

[\[1\]](#) (2012) 12 SCC 693

[\[2\]](#) (1998) 7 SCC 123

[\[3\]](#) (1997) 7 SCC 556

[\[4\]](#) (2012) 5 SCC 157

[\[5\]](#) (2000) 3 SCC 54