

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4135 of 2015

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ORDER:

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This Civil Revision Petition by the petitioners/defendants is directed against the orders dated 14.09.2015 of the learned Principal Junior Civil Judge, at Mancherial of Adilabad District passed in I.A.no.452 of 2015 in I.A.no.148 of 2015 in O.S.no.451 of 2012 filed under Order IX Rule 4 of the Code of Civil Procedure, 1908 requesting to set aside the order of dismissal for default dated 26.06.2015 passed in I.A.no.148 of 2015 and restore the said application to file.

2. I have heard the submissions of the learned counsel for the petitioners/defendants ('the defendants', for brevity) and the learned counsel for the respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The facts necessary for consideration, as borne out by the record and as per the submissions made at the hearing, in brief, are as follows:

The plaintiff brought the suit for perpetual injunction against the defendants. The defendants filed written statement resisting the suit. The suit was posted to 09.10.2014 for trial. On that date, the plaintiff (PW1) was examined in chief. As the defendants were absent and there was no representation for them, the Court below recorded in the deposition of PW1 that the cross examination is 'Nil'. In the circumstances, the defendants got filed I.A.no.148 of 2015 ('the first IA', for brevity) to reopen the evidence of PW1 for cross-examination. The said first IA was posted to 26.06.2015 for enquiry. But, that said first IA was dismissed on 26.06.2015 for default, that is, for non-prosecution and for the absence of the defendants before the trial Court. Hence, the defendants had filed the subject petition in I.A.no.452 of 2015 ('the instant petition', for brevity) for restoration of the aforementioned first application

in I.A.no.148 of 2015 after setting aside the dismissal order for default dated 26.06.2015. The instant petition was resisted by the plaintiff. The trial Court, by the impugned order, had dismissed the said instant petition. Hence, the defendants are before this Court.

4. The case of the defendants in the instant petition is that on 26.06.2015, to which date the first I.A.no.148 of 2015, which is filed for reopening the evidence of PW1 for the purpose of cross-examination of PW1, was posted, the train in which the 1st defendant had traveled to reach the Court had arrived late and that therefore, he could not appear before the Court in time though his counsel had instructed him to appear before the Court and hence, the said first IA was dismissed for default and that if the said dismissal order for default is not set aside and the first I.A.no.148 of 2015 is not restored to file, the defendants would suffer serious and irreparable loss.

5. The case of the plaintiff, who had resisted the instant petition is that the instant petition, which was filed at a belated stage when the suit is reserved for judgment, is not maintainable and that the petition is intended to dodge the matter and that in fact, PW1 was examined in chief on 09.10.2014 and that subsequently, the suit was adjourned to several dates for cross-examination of PW1 by the defendants, but, the defendants had failed to cross-examine PW1 and that therefore, finally, the Court was pleased to proceed further in the matter and that eventually, the suit is reserved for judgment and hence, the instant petition is liable to be dismissed.

6. The learned counsel for the defendants would submit that the suit is filed for perpetual injunction in respect of an immovable property and that on the day i.e., 26.06.2015 on which the first IA was posted, the 1st defendant could not reach the Court in time due to delayed arrival of the train and that therefore, he could not be present before the trial Court in time despite the instructions from his counsel to appear before the Court and hence, the absence of the defendants before the trial court on 26.06.2015 is neither willful nor wanton and that instant petition seeking restoration of the first IA was filed immediately on 29.06.2015 without any further delay and that the Court below did not consider the said vital fact and the further fact that sufficient cause was shown in the instant petition but, the Court below had

unnecessarily taken into consideration the aspects of non appearance of the defendants on the dates of adjournments prior to 26.06.2015 and had stretched the matter to cover circumstances which had occurred prior to the date of dismissal of the first IA 148 of 2015 on 26.06.2015.

7. On the other hand, the learned counsel for the plaintiff while supporting the orders of the court below vehemently contended that the suit is of the year 2012 and that the defendants were never ready in the matter and that their conduct lays bare that they are only dragging on the matter as they have no tenable defence in the suit.

8. The first IA no.148 of 2015 filed by the defendants was dismissed for default on 26.06.2015. The instant petition was filed by the defendants promptly and without much of a delay on 29.06.2015 for restoration of the said first IA. In the said circumstances, the trial Court ought to have examined as to whether the defendants have shown sufficient cause for their absence before the trial Court on 26.06.2015 on which date, the dismissal order for default was made in the first I.A.no.148 of 2015. As rightly urged, while considering the merits of the instant petition filed for the restoration of the first IA that was dismissed for default, the Court has to only consider the valid reason, if any, for non appearance of the defendants on the day the earlier IA was dismissed for default, but the Court cannot take into consideration the aspects of non appearance of the defendants on previous dates of adjournments and cannot stretch the matter to cover circumstances which had occurred prior to 26.06.2015 as the said conduct prior to the said date has to be considered when the first IA 148 of 2015 comes up for disposal on merits in case of its restoration. In the instant case, it is to be noted that the defendants had offered an explanation that on 26.06.2015, the 1st defendant could not reach the Court in time as the train in which he had travelled on that day to reach the Court had arrived late and that therefore, the defendants could not appear before the Court despite the instructions of the counsel to appear before the Court. Further, the defendants had filed the instant petition promptly on 29.06.2015 stating the above said cause for their absence in the affidavit filed in support of the instant petition. In **Parimal v. Veena**, the Supreme Court while explaining the expression 'sufficient cause' had held that sufficient cause is thus a cause for which the defendant could not be blamed for his absence. In this decision, it was further held as follows: 'However, the facts and circumstances

of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion it has to be exercised judiciously.' Having regard to the facts and the legal position obtaining, this Court finds that the trial Court was in error in not granting the relief and in ignoring the fact that the instant petition is filed promptly showing sufficient cause. For the aforesaid reasons, this Court finds that sufficient cause is shown for granting the relief sought for in the instant petition and a case is made out for setting aside the impugned order.

9. In the result, the Civil Revision Petition is allowed and the impugned order of the Court below is set aside and I.A.452 of 2015 is allowed. The Court below is directed to now take up IA 452 of 2015 and dispose of the same on merits as expeditiously as possible, nevertheless, after giving an opportunity to the plaintiff to file counter, however, uninfluenced by the observations, if any, in these orders. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

29th February 2016

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