

**HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

**CIVIL REVISION PETITION No.5328 of 2016**

**ORDER:**

The revision petitioner is the defendant in O.S.No.766 of 2013 on the file of Senior Civil Judge, City Civil Court, Hyderabad. The suit filed by the plaintiff/revision respondent against him for recovery of amount based on Ex.A1-pro note dated 17.05.2010 of the alleged debt of Rs.2,00,000/- said to have been borrowed by defendant. The suit was filed on 01.06.2013 for recovery of Rs.3,08,000/- in all as suit claim there was exparte decree dated 26.12.2013 against the defendant. The defendant appeared through advocate. The impugned dismissal order of the lower Court dated 19.09.2016 in I.A.No.1035 of 2015 in dismissing the application to condone the delay of 678 days in filing the petition to set aside the said exparte decree dated 26.12.2013. the defendants remained exparte in the suit before passing said exparte decree, on 09.12.2013 itself though appearing through advocate, the advocate on record failed to inform him about he was set exparte for non-appearance and subsequent passing of decree and he got knowledge of the exparte decree only on 25.10.2015 when bailiff came to his parents residence for execution of the exparte decree and he is unemployed with no source of income or with property and there is no willful default in his non-appearing resulting in passing of exparte decree which requires to be condoned. It is pursuant to the said averments in the application to condone the delay the plaintiff opposed as respondent said petition to set aside the exparte decree saying the defendant was regularly attending the criminal court in cheque bounce case and

engaged advocate and no prudent man will keep quiet without enquiry of suit progress from his advocate having failed to file written statement despite opportunity remained exparte from which suit was decreed and execution petition in E.P.No.443 of 2014 is pending for attachment of movables and the petitioner did not allow the Court Amen to execute and attach and thereby the petition is liable to be dismissed for no grounds to condone the delay.

2. The lower Court in factual matrix for elaborate order dated 19.09.2016 supra, dismissing the application for no grounds to condone the delay. Now what is urged is the suit claim is barred by limitation and he did not execute the pro-note in favour of plaintiff but stood as surety to one Yasmeen Haziyani and plaintiff is not entitled to the suit claim. This could be defence if at all he could have set up so also in the cheque bounce case and having knowledge of the proceedings from the deemed knowledge of knowledge through advocate when appearing for failed to attend and supposed to diligently prosecute. No doubt before the trial Court no affidavit of the advocate filed to support the version. According to the very defendant/revision petitioner in his reply he stated borrowal of Rs.2,00,000/- is true but disputes the date and rate of interest but for saying a blank pro-note and blank cheque was issued and the same was misused and the suit claim is barred by time.

3. It is in pending revision as additional material said notice and reply filed no doubt also with affidavit of advocate on record of Sri M. Dasarath with the office name and style Rao and Associates

as appeared in the suit to defend saying during period from July 2013 onwards due to ill-health he could not appear before the Court and could not inform his client/defendant about the case status and from the non filing of written statement and non payment of costs and non-appearance, consequently exparte decree passed.

4. In view of the said factum stated by the advocate that could not be disputed, this Court, from the pragmatic approach required to be adopted, though none of the decisions placed reliance by the learned counsel for the revision petitioner are applicable to the case on hand, but from the recent past expression of the Apex Court in Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy particularly by scanning the law with observations at Para 21, and practice from 21.1 and 4 of the approach should be liberal, pragmatic, justice oriental and non pedantic and not to presume deliberate causation of delay. Here in case on hand there is affidavit of the advocate showing due to his ill-health he could not attend the case and he could not file the written statement and could not inform the party resulted in setting aside him exparte by exparte order and in passing the exparte decree and from the contest right from the reply notice which is tenable on merits to decide this Court feels from the liberal and pragmatic approach required and to sub serve the ends of justice to condone the delay and setting aside the exparte decree however subject to condition of the petitioner/defendant depositing half of the suit amount with entire costs within one month from the date of receipt of the order for the plaintiff to withdraw subject to furnishing of security the said

amount other than costs, since costs can be withdrawn without furnishing the security if the same is not complied with without any further reference to the Court the order of the lower Court holds good and in the event of compliance before the lower Court, the lower Court shall by virtue of this order from the proof of compliance setting aside the dismissal order and allow the application and condoning the delay and also consequently the application setting aside the exparte decree by permitting the defendants to file written statement within 15 days from date of said compliance and after formulating necessary issue to decide the suit on own merits by recording evidence afresh for the evidence already record in the exparte proceedings has no sanctity to use against the defendant unless defendant consents to proceed further on own merits.

5. Accordingly and in the result, the revision petition is allowed subject to condition of petitioner/defendant depositing half of the suit amount with entire costs within one month from the date of receipt of the order for the plaintiff to withdraw subject to furnishing security and since costs can be withdrawn without furnishing security and non-compliance of the above condition, the order of the lower Court holds good without any further reference to the Court.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

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**JUSTICE Dr. B.SIVA SANKARA RAO**

Date: 26.12.2016  
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