

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3809 of 2016

ORDER:

1) Aggrieved by the order, dated 18.01.2016, passed in I.A.No.1118 of 2015 in O.S.No.212 of 2007 on the file of the Additional Senior Civil Judge, Tirupati, wherein and whereunder a petition filed under Order 9 Rule 7 of C.P.C. to set aside the exparte order dated 28.01.2014 was dismissed, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

3) O.S.No.212 of 2007 came to be filed by the first respondent herein seeking a direction to the defendants to execute a regular sale deed in favour of the plaintiff in respect of plaint schedule property in pursuance to the agreement of sale dated 25.01.2016 after receiving the balance sale consideration. Originally the suit was filed only against defendant Nos.1 to 4. The petitioner was added as defendant No.5 as per the orders in I.A.No.662 of 2009, dated 28.03.2013. Thereafter, necessary amendments were carried out in the plaint. The petitioner was served with summons, but unfortunately could not attend the Court as he was suffering with jaundice. As the petitioner absent, the trial Court set him

exparte on 28.01.2014. Having regard to the above, he made an application to set aside the exparte order. A counter came to be filed by the plaintiff opposing the same on the ground of delay in filing an application to set aside the exparte order and there is no material to show that the petitioner was suffering with jaundice. Considering the rival submissions made, the trial Court rejected the application on the ground that the petitioner failed to appear before the Court in spite of service of summons and there was abnormal delay of 636 days in filing an application to set aside the exparte order. Challenging the same the present revision is filed.

4) In spite of service of summons there is no representation on behalf of respondent Nos.2, 3 and 5. Heard learned counsel for the petitioner.

5) Learned counsel for the petitioner mainly submits that the petitioner is a bonafide purchaser of the property from defendant Nos.1 to 4 and if the suit is decided in his absence he would be put to an irreparable loss. It is urged that non-appearance of the petitioner before the trial Court is neither intentional nor wanton.

6) In *G.P.Srivastava v. R.K.Raizada and others*¹, the Apex Court held as under:

¹ (2000) 3 SCC 54

“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.”

7) The fact that the petitioner was impleaded as defendant No.5 vide order dated 28.03.2013 in I.A.No.662 of 2009 is not in dispute. It is true that there is a delay of 636 days in filing an application to set aside the exparte order but at the same time it is to be noted that the petitioner entered into an agreement of sale with defendant Nos.1 to 4 in respect of plaint schedule property and if he is not heard he would be put to irreparable loss. Though there is no limitation for filing petition to set aside the exparte order, but the Courts have to construe the cause liberally. It is clear from the material on record that the petitioner could not appear before the trial Court only due to his ill health as he was suffering with jaundice. The said explanation cannot be brushed aside having

regard to the circumstances referred to above. In view of the above, it would be just and proper to hear the petitioner/defendant No.5 also in order to avoid multiplicity of litigation, if the suit is still pending consideration and if the arguments of both sides are not heard till date.

8) Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs.

9) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

20.12.2016
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JUSTICE C. PRAVEEN KUMAR