

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. Nos.1142 and 1154 OF 2016

COMMON ORDER:

The Civil Revision Petitions are filed against the orders dated 05.02.2016 passed in I.A. Nos.3174 and 3173 of 2015 in O.S. No.115 of 2013 respectively by the III Additional District Judge, Kakinada.

2) Heard learned counsel for the revision petitioner and learned counsel for the respondents. Perused the material on record.

3) The revision petitioner is the plaintiff in O.S. No.115 of 2013 on the file of III Additional District Judge, Kakinada, for recovery of Rs.27,04,107/- due from the defendants 1 and 2. The defendants 1 and 2 were remained exparte before the trial Court. The trial Court passed an exparte decree on 13.11.2014 in favour of plaintiff against the defendants and as per the operative portion of the exparte decree, plaintiff is entitled to recover from the defendants a sum of Rs.27,04,107/- with subsequent interest at 12% per annum from the date of suit till the date of decree and thereafter, with future interest at 6% per annum on the principal amount of Rs.18,36,767/- and also costs of Rs.29,588/-.

4) It is after the said exparte decree, the Decree Holder (D.Hr) filed E.P. No.24 of 2015 before the same Court for recovery of the decree amount. Certified copy of the counter filed in E.P was marked as Ex.B1 before the lower Court is filed. The application to set-aside the exparte decree still unnumbered along with the application I.A. No.3174 of 2015 filed under Section 5 of the Limitation Act to condone the delay of 358 days in filing the

petition to set aside the exparte decree and the lower Court allowed the application by condoning the delay of 358 days on 05.02.2016, and I.A. No.3173 of 2015 is filed to set aside the exparte decree, on 05.02.2016 the lower Court allowed the application by setting aside the exparte decree. Impugning the same the present revisions are maintained.

5) The contentions of the learned counsel for the revision petitioner is that there are no grounds to condone the delay of 358 days and the decree passed is after service of notice to defendants and failed to attend and even there are no grounds to set aside the exparte decree, much less to condone the delay and there is no sufficient cause shown within the meaning of Section 5 of the limitation Act and the lower Court committed grave error in condoning the unexplained exorbitant delay of 358 days in allowing the petition by simply imposing costs of Rs.4,000/-. Thereby, to set-aside the impugned order and prayed to allow the revision.

6) Whereas, it is the submission of the learned counsel for the respondents/ defendants that the lower Court allowed the petition supported by reasons is well considered and for this Court while sitting in revision, there is nothing to interfere with the impugned order and prayed to dismiss the revision.

7) Heard both sides at length and perused the material on record.

8) Once such is the case, the considerations for Order IX Rule 13 C.P.C are different from considerations for condoning the delay is existence of sufficient cause under Section 5 of Limitation

Act. In this case, the reason assigned to condone the delay was that Assistant Government Pleader informed that he was discharged from duties and advised them to approach present A.G.P for filing memo of appearance and for enquiry in execution petition. After enquiries only, they came to know about the suit where they were set exparte and the exparte decree was passed against them.

9) The peculiar facts of the case necessary to mention are that after serving notice in the execution petition if taken as knowledge to compute limitation period therefrom to the exparte decree set aside petition, it is well within limitation. The application to set-aside the exparte decree was filed based on that and the same was when returned, later filed a fresh application by showing the delay of 358 days to condone.

10) In fact, the approach to be required in such applications to condone the delay as per the settled law is a pragmatic one, though the delay to be explained, unless it is a common explanation, for day to day; but for to say either length of time or short period of time is of no criteria much less to influence, thereby, but for further to consider with a pragmatic approach whether there is any sufficient cause or not.

11) The record clearly speaks that the Government Pleader was earlier appeared without contesting the matter and from the change of AGP by no communication or no information to the subsequent Government Pleader, the things went on without their knowledge. Once such is the case, so far as the condonation of

delay is concerned, for this Court while sitting in revision, there is nothing to interfere.

12) However coming to Order IX Rule 13 C.P.C concerned, the law is fairly settled that the Court can impose conditions like deposit of half or 1/3rd of the decretal amount with costs as a reasonable condition for the exparte decree cannot be casually, for the sake of mere asking and even within time, be set-aside.

13) Once such is the case, the suit claim is for Rs.27,04,107/- with subsequent interest from the date of suit and also costs. According to the contest in the written statement from the application averments, the defendants say that they already paid Rs.14,64,437/- out of Rs.27,04,107/- and the remaining of Rs.12,39,570/- is payable as on 10.11.2010. Out of total value of work Rs.29,78,060/-, 80% of the value of work done, as such said to have been payable of Rs.23,82,448/- and Rs.6,45,405/- deducted towards tender less (27.09%). It is also in saying after deducting the statutory recoveries, an amount of Rs.14,64,437/- was paid to the contractor on 10.11.2010.

14) Having regard to the above and from the submission, the principal amount due is about Rs.14,64,437/- as on 10.11.2010. Even by taking the same with interest therefrom, it is just to direct the respondents to deposit atleast Rs.8,00,000/- (Rupees eight lakhs only) before the lower Court to set aside the exparte decree, and such deposit to be made is within one month from the date of receipt of the order and only thereafter the order of the lower Court in setting aside the exparte decree be implemented and in the meantime there shall be stay of execution. Once this

order is implemented by such deposit, the E.P proceedings will become infructuous and will be closed. However, what is the amount to be deposited by the respondents of Rs.8,00,000/-, the D.Hr is entitled to withdraw, subject to giving undertaking to reconstitute the same in the event of success of the defendants in the suit.

15) Accordingly and in the result, the revision petitions are disposed of. No order as to costs.

Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dt.27.09.2016
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Dr.JUSTICE B. SIVA SANKARA RAO