

**HON'BLE SRI JUSTICE S.V. BHATT**

**CIVIL REVISION PETITION No.505 OF 2016**

**ORDER:**

Heard Mr.V.Roopesh Kumar Reddy for the revision petitioner and Mr. O. Manohar Reddy holding for Mr.C.Subodh Advocate on record for respondent.

The defendant in O.S. No.706 of 2008 in the Court of I Additional Senior Civil Judge, Nellore, is the revision petitioner. The revision is directed against the order dated 18.12.2015 in I.A. No.433 of 2012. The revision petitioner filed the said application to condone the delay of 843 days in filing application to set aside *ex parte* decree dated 06.11.2009 in O.S.No.706 of 2008. The said application through order impugned in the revision was dismissed by the trial Court. Hence the revision.

The brief facts necessary for disposal of the revision are as follows:

The respondent herein filed O.S. No.706 of 2008 for eviction of revision petitioner from the plaint schedule property and for recovery of rents from the revision petitioner. On 06.11.2009, the suit was decreed *ex parte*. The respondent on 30.04.2010 filed E.P. No.118 of 2010 to execute the decree passed in O.S. No.706 of 2008. On 28.06.2010, the executing Court ordered notice to revision petitioner. On 28.03.2012, the revision petitioner filed the instant application for condoning the delay of 843 days in filing application to set aside the *ex parte* decree.

Before advertng to the averments made in the affidavit filed in support of I.A. No.433 of 2012, the dates are chronologically stated only to preface that the revision petitioner in spite of receipt of notice in E.P.No.118 of 2010 has taken nearly two years to file I.A. No.433 of 2012. This Court may not be completely swayed by the indifferent attitude of revision petitioner in filing the application at least from the date

of knowledge of the *ex parte* decree dated 06.11.2009. The revision petitioner seeks the indulgence of the Court on the sufficient cause stated in the affidavit filed in support of I.A. No.433 of 2012 to condone abnormal and inordinate delay of 843 days in filing the application.

The averments in support of the plea for condonation of delay are that the revision petitioner engaged an Advocate and thereafter, the revision petitioner approached the respondent/plaintiff for settlement and claims to have paid arrears of rent up to January, 2010 to respondent. The respondent agreed to continue the tenancy on enhanced rent and that the respondent will not press E.P. No.118 of 2010. The revision petitioner reposing confidence in the respondent did not take steps for filing written statement or application as required by law either for condoning the enormous delay or setting aside the *ex parte* decree. The complaint against respondent in the affidavit is that the respondent failed to honour the undertaking given to revision petitioner to file a memo in the Court below. He claims to have knowledge of *ex parte* decree dated 06.11.2009 only when Amin came to suit schedule to evict the revision petitioner. Thereafter, the instant application is filed. The respondent filed counter affidavit and he has specifically and categorically denied each one of the allegations with reference to either to the conduct of respondent or the alleged acceptance of arrears of rent from the revision petitioner.

Learned counsel Mr.Roopesh Kumar Reddy vehemently contends that the alleged payment of receipts, which constitutes the *bona fide* plea of revision petitioner, though these payments are not exhibited in the Court below, (are filed in the revision) requests the Court to examine these receipts issued by the respondent viz. the bonafide circumstances under which the application was not filed in time and prays for condonation of delay.

Mr.O.Manohar Reddy contends that for the reasons recorded by the trial Court, firstly no exception is pointed out by the revision petitioner,

secondly, this Court in exercise of its revisional jurisdiction under Section 115 of Civil Procedure Code could not rely upon documents which are not filed before the trial Court and thirdly, he contends with vehemence that the affidavit filed by the revision petitioner on its own strength is required to be rejected and no sufficient cause is made out for condonation of delay. It is further elaborated that the averments in paragraph 2 are completely contradictory and inconsistent with each other. According to him, the reason for enormous delay is lack of knowledge till the Amin has visited the suit schedule premises. The revision petitioner in paragraph 2 categorically states that he engaged an Advocate. After coming to know of passing of the *ex parte decree*, the revision petitioner claims to have negotiated with the respondent and on the condition of paying arrears of rent, the respondent has given an assurance not to put the decree to execution. The trial Court has recorded the following findings.

“Admittedly, the suit was decreed on 6.11.2009 in favour of respondent/plaintiff. In the absence of any documents in writing, it is difficult to believe that the petitioner/defendant approached the Managing Partner of plaintiff and paid entire arrears of the rent. If really, the petitioner approached Managing Partner of plaintiff-firm and paid the arrears, the petitioner is supposed to get receipts from Managing Partner of the plaintiff-firm. It is much difficult to believe that even after filing of the suit, the petitioner simply paid the arrears without getting any receipts. Moreover, the petitioner stated that he was believing the words of Advocate Clerk that he filed petition to set aside *ex parte decree* and later he came to know that no such petition was filed on change of advocate clerk. However, the petitioner did not even mention the name of the said Advocate clerk. The petitioner did not say that he has taken any action against the said advocate clerk. Therefore, the contention of petitioner cannot be considered. It appears when the Court Amin went to evict the petitioner, he(petitioner) coolly came to Court and filed this petition to avoid eviction. Therefore, there are no merits in this petition and the same is liable to be dismissed.”

I have taken note of the submissions of learned counsel appearing for the parties, perused the material available on record, particularly, the receipts on which the revision petitioner requests this Court to consider the *bona fide* circumstances under which there is delay.

At the outset, I have to hold that the condonation of delay is by reference to the averments stated in the affidavit filed in support of I.A. No.433 of 2012. During the course of hearing, learned counsel appearing for revision petitioner confronted with the difficulty of explaining how each one of the circumstances constitute sufficient cause and fairly stated that the affidavit suffers from contradictions and inconsistency. Firstly, the sufficient cause is not at all stated, secondly, pleas of convenience are taken by the revision petitioner and thirdly, even while taking pleas of convenience, there is no consistency as to whether the allegations constitute sufficient cause or not. After perusing the material available on record and findings recorded by the trial Court, I hardly see any irregularity and illegality. For the above reasons, the revision fails and is accordingly dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

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**S.V. BHATT,**

**J**

Date: 11.02.2016

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