

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Civil Revision Petition No.3434 of 2016

ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the XX Additional Chief Judge-cum-VI Additional Metropolitan Sessions Judge, City Civil Court at Secunderabad, in I.A.No.163 of 2016 in O.S.No.98 of 2009 dated 01.06.2016. The petitioner herein is the 4th defendant in O.S.No.98 of 2009, and the petitioner in I.A.No.163 of 2016. The Suit was filed by the first respondent herein seeking delivery of the suit schedule property with mesne profits.

In the order under revision, the Court below observed that the Suit was filed for delivery of vacant possession of the suit schedule property with mesne profits; the petitioner, who was the 4th defendant in the Suit, did not deny receipt of summons; he was set *ex parte* on 06.10.2009; the other defendants, who were his family members, had contested the Suit; the sole ground urged by the petitioner was that his mother had died on 04.08.2012, and he was in grief and was out of normal life till recently; the other brothers were contesting the Suit; the only ground urged by the petitioner was not convincing for such a long delay of 6 years and odd; and there were no merits or *bona fides* in this application. The Court below refused to condone the delay of 6½ years in filing an application to set aside the *ex parte* order.

Before this Court, Smt.P.Radhika, Learned Counsel for the petitioner, would submit that the death of petitioner's mother on 04.08.2012 resulted in his suffering immense grief which resulted in his inability to file an application to set aside the *ex parte* order. She would rely on an order passed by this Court in **Azmath Baig v. T.Naresh Kumar Singh**^[1] in support of her submission that a lenient view should be taken by the Court and, if need be, the delay should be condoned on payment of costs.

In **Azmath Baig¹** the application to set aside the *ex parte* order was moved three years after the petitioner was set *ex parte*. The Court below had allowed the application imposing costs. Aggrieved by the order, condoning the delay in filing an application to set aside the *ex parte* order, a revision was preferred to this Court; and it is in such circumstances that, in **Azmath Baig¹**, this Court held that an opportunity could be granted to the defendants to contest the Suit on payment of costs. This Court observed that the expression “***upon such terms as the Court directs as to the costs or otherwise***” conferred a discretion on the Court to condone the delay, and the object was only to ensure the orderly conduct of the proceedings by penalizing improper dilatoriness calculated merely to prolong the litigation.

Even before this Court Smt.P.Radhika, Learned Counsel for the petitioner, does not dispute that summons were served in the Suit on the petitioner-4th defendant. It is only after summons were served, was the petitioner herein set *ex parte* by order dated 06.10.2009. It is only 6½ years thereafter was the present application filed on 26.03.2016. Even if the petitioner’s contention, that he was in grief on account of the death of his mother on 04.08.2012, were to merit acceptance, there is no explanation for the failure of the petitioner to approach the Court on any day after 06.10.2009 and prior to 04.08.2012. As has been noted by the Court below, it is difficult to accept that, even thereafter for a period of more than 3½ years, the petitioner was in such a condition as to render him unable to file the application earlier.

The Court below has, for just and valid reasons, exercised discretion not to entertain the application. It has also observed that the application was filed with an intention to drag on proceedings at the fag end of the matter. It is not in dispute that the Suit is at the stage of hearing; and, as held by the Court below, the application filed 6½ years after summons were served was just before the Suit could be finally decided.

The jurisdiction which this Court exercises under Article 227 of the

Constitution of India is supervisory and not appellate and, save patent illegality in the order under revision, this Court would refrain from interference. The Court below, in exercising discretion not to entertain the application to set aside the *ex parte* order, has not committed any illegality. In **Azmath Baig¹** the Court below exercised discretion to set aside the *ex parte* order against which the revision was filed. On the other hand, in the present case, the Court below has exercised its discretion not to entertain the application to set aside the *ex parte* order. Again unlike in **Azmath Baig¹** where the delay was around three years, the delay in the present case is around 6½ years. Viewed from any angle, the order under revision does not suffer from any illegality necessitating interference in proceedings under Article 227 of the Constitution of India.

The Civil Revision Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J.

Date:15.07.2016.

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[\[1\]](#) 2006 (3) ALT 266