

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.2247 OF 2016

ORDER

This Civil Revision Petition under Article 227 of the Constitution arises out of the order dated 28.03.2016 passed by the learned Principal District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad, in I.A.No.3135 of 2015 in I.A.No.3099 of 2014 in O.S.No.775 of 2013.

The petitioner is the defendant in the said suit which was filed for recovery of money. The suit was decreed *ex parte* on 04.10.2013. Thereupon, the petitioner/defendant filed I.A.No.2 of 2014 therein seeking condonation of the delay in seeking the setting aside of the *ex parte* decree. The I.A. was allowed by the trial Court on 17.12.2014. Thereupon, the 'set aside decree' application filed by the petitioner/defendant was numbered as I.A.No.3099 of 2014 and notice was ordered thereon to the respondent/plaintiff. However, as the petitioner/defendant failed to take steps to serve the notice and did not even appear before the trial Court, the I.A. was dismissed for default on 21.04.2015.

The respondent/plaintiff thereafter sought transfer of the said decree to the Court of the learned I Additional District Judge, Ongole, for execution. After transfer of the decree, the respondent/plaintiff filed E.P.Nos.48 and 59 of 2015 before the learned I Additional District Judge, Ongole. Notice was ordered therein to the petitioner/defendant. At that stage, the petitioner/defendant filed the subject I.A. under Section 5 of the Limitation Act, 1963, to condone the delay of 160 days in seeking restoration of I.A.No.3099 of 2014 filed to set aside the *ex parte* decree. By the order under revision, the trial Court dismissed the application. Hence, this CRP.

Heard Sri R.Raghunandan Rao, learned senior counsel representing Sri S.Lakshmi Kanth, learned counsel for the petitioner/defendant, and Sri M.Devender Reddy, learned counsel for the

respondent/plaintiff.

Perusal of the order under revision reflects that the suit was filed for recovery of a sum of Rs.2,00,02,000/- with interest and costs. Despite service of the summons therein, the petitioner/ defendant did not choose to appear owing to which he was set *ex parte* and ultimately, the *ex parte* decree dated 04.10.2013 was passed. I.A.No.2 of 2014 was thereupon filed by him in the suit to condone the delay in seeking the setting aside of the *ex parte* decree. This I.A. was filed in January, 2014, and was allowed on 17.12.2014. Thereupon, the set aside application filed by him was numbered as I.A.No.3099 of 2014. Owing to his failure to serve notice therein as directed and his absence before the Court, the I.A. was dismissed for default on 21.04.2015. It appears that only because of the transfer of the decree to the Court at Ongole and the filing of execution proceedings, the petitioner/defendant came up with the subject I.A. to condone the delay of 160 days in seeking restoration of the set aside application dismissed on 21.04.2015.

Perusal of the affidavit filed in support of the I.A. reflects that the petitioner/defendant claimed that he acted in accordance with the Memorandum of Understanding dated 06.05.2012 and as the issue had been amicably settled, he was shocked to receive notices from the executing Court at Ongole.

Sri R.Raghunandan Rao, learned senior counsel, would assert that the petitioner/defendant was under the impression that the respondent/plaintiff would not take any further steps pursuant to the *ex parte* decree dated 04.10.2013 passed in O.S.No.775 of 2013 owing to the subsequent settlement between the parties in relation to a cheque bounce case.

Per contra, Sri M.Devender Reddy, learned counsel, would point out that the Memorandum of Understanding dated 06.05.2012 sought to be relied upon was long before the suit. He would further point out that the parties were required to act in terms of the same within three months.

The Memorandum of Understanding dated 06.05.2012

categorically records under Clause (1) that its validity is for three months. Further, it is highly improbable that the petitioner/defendant, if he acted in terms of the aforestated Memorandum of Understanding, would have parted with monies without getting the same recorded through the Court, being fully aware of the *ex parte* decree dated 04.10.2013.

That apart, a crucial aspect which requires to be noted is that the petitioner/defendant has no excuse whatsoever to offer for the delay of 160 days in the filing of the subject application. Reference to transactions relating to a cheque bounce case indicates that the relationship between the parties was not amicable but despite the same, the petitioner/defendant did not take steps diligently. Having filed an application to set aside the *ex parte* decree dated 04.10.2013 the petitioner/defendant did not pursue the same, so much so that he did not even choose to present himself before the Court on the relevant date and this led to the dismissal of the application as long back as on 21.04.2015.

Given the aforestated facts, this Court opines that the conduct of the petitioner/defendant unequivocally demonstrates clear negligence and carelessness on his part and no indulgence can be shown to him at this stage. The order under revision therefore does not warrant interference on any ground.

The Civil Revision Petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

11th JULY, 2016

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