

HON'BLE SRI JUSTICE R.KANTHA RAO

Civil Revision Petition No.201 of 2009

Order:

Heard Sri O.Manohar Reddy, learned counsel appearing for the petitioner/defendant and Sri P.Sridhar Reddy, learned counsel appearing for the respondents/ plaintiffs.

2. The petitioner is the defendant in O.S.No.6 of 1991 on the file of Senior Civil Judge's Court, Gudur, SPSR Nellore district. The respondents/plaintiffs instituted the suit for injunction simplicitor. After commencement of the trial, the matter was posted for cross-examination of P.W.2. On the given date, P.W.2 was present but the revision petitioner/defendant was absent and there was no representation by the counsel for the defendant. Thereafter, an *ex parte* decree

was passed on 30-8-1999 against the defendant.

The defendant filed a petition under Section 5 of the Limitation Act to condone the delay in filing the application to set aside the *ex parte* decree. The cause shown by the petitioner/defendant was that he was unable to attend the Court on account of the visit of the Chief Minister. The learned trial Court considering the fact that the defendant was not diligent in prosecuting his case in the past and also taking the view that the cause shown by the defendant is not sufficient cause within the meaning of Section 5 of the Limitation Act, dismissed the application. The learned trial Court observed that the suit was pending since 1991 and the defendant at no point of time evinced any interest in prosecuting his case. Against the order dismissing I.A.No.204 of 2007 in I.A.No.100 of 2003, the petitioner preferred C.M.A.No.4 of 2005, which came to be heard by the Senior Civil Judge, Gudur. The learned Senior Civil Judge confirmed the

findings recorded by the trial Court and dismissed the C.M.A.

3. The point for determination in the revision is whether there are any valid grounds to interfere with the order passed by the trial Court, which is confirmed by the appellate Court in the C.M.A. ?

4. Point:- It is true that O.S.No.6 of 1991 was pending since a long time. From the proceedings of the Courts below, it cannot be said that the suit was pending since 1991 only on account of the delay on the part of the petitioner/defendant. As the application and the appeal filed by the petitioner/defendant were not disposed of by the Courts below for a long time, the suit is said to be pending since 1991. It requires to be noticed in this context that the delay in filing the application to set aside the *ex parte* decree is only 55 days.

5. The learned counsel appearing for the petitioner would submit that the pendency of the suit since 1991 was on account of the fact that there was no Presiding Officer at the trial Court for several years.

6. In any event, the entire delay occasioned in the disposal of the suit cannot be attributed to the defendant. Further, when an application to condone the delay is filed under Section 5 of the Limitation Act, the Court has to find out whether there is a sufficient cause to condone the delay and the conduct of the party relevant on the crucial date but not anterior to it. Under these circumstances, I am of the view that the civil revision petition can be allowed by imposing some costs on the defendant.

7. Consequently, the order dated 25-11-2004 passed in I.A.No.204 of 2004 in I.A.No.100 of 2003 in O.S.No.6 of 1991, which was confirmed in C.M.A.No.4 of 2005, is set aside on the condition of the petitioner/defendant paying the costs of Rs.3,000/- (Rupees three thousand only) to the respondents/ plaintiffs within a period of 6 (six)

weeks. On the said condition, the civil revision petition is allowed.
The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

R.KANTHA RAO, J.

21st January, 2016.

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