

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CIVIL REVISION PETITION No.1163 of 2016

ORDER :

This Civil Revision Petition is preferred by the very petitioner against the order dated 16.12.2015 in I.A.No.421 of 2015 in O.S.No.2198 of 2013 passed by the Principal Senior Civil Judge, Ranga Reddy District.

2. I.A.No.421 of 2015 is moved seeking condonation of delay of 339 days in filing petition to set aside the *exparte* decree.

3. The case of the petitioner is that though he has figured as defendant in O.S.No.2198 of 2013, which was filed for specific performance of the Agreement of Sale dated 26.10.2002, the said suit was decreed *exparte* on 23.04.2014. The petitioner has not been served with any summons from the Court. However, upon receipt of notice in E.P.No.67 of 2015, the petitioner appeared before the Executing Court on 23.03.2015 and then realised about the filing of civil suit and that being decreed *exparte* on 23.04.2014. The petitioner was out of the country when the suit was posted on 17.03.2014 and for non-appearance of the defendant, the suit was decreed *exparte*. He, therefore, filed an application to set aside the said *exparte* decree. Since there was considerable amount of delay in filing such an application, the present I.A.No.421 of 2015 has been filed seeking condonation of delay of 339 days in filing petition to set aside the *exparte* decree.

4. Since the petitioner herein has taken the stand that the suit summons have not been served on him, the Process Server of the Court Smt. D. Aruna was examined as P.W.1., who categorically deposed that on 21.01.2014 she served summons on the defendant in the suit and the defendant personally received the suit summons and notices. Further, she also deposed that she

served the notice in E.P.No.67 of 2015 also at the same address and to the same person, who is the judgment debtor. The deposition of the Process Server is clear and categorical that the suit summons were delivered on 21.01.2014 to the petitioner herein and he has ignored to respond to the same and to cover up his lapse, he has taken the plea that the suit summons have not been served on him.

5. When the petitioner has taken a stand that he was out of the country at the time when the suit summons were served, it was certainly a very legitimate reason for his non-appearance on the date mentioned in the suit summons. If it were true that the petitioner, who is the defendant in the suit, was not in the country on 21.01.2014, the assertion of P.W.1 Process Server that she served the summons and notices in the suit on the defendant could not be accurate and correct. Therefore, he ought to have produced the relevant material in support of his plea that he was away from the country on 17.01.2014 onwards. Since the petitioner herein has not produced the original of the Passport for consideration of the Court below, the Court had come to a prima-facie conclusion that in spite of receiving the summons in the suit, he has failed to produce necessary evidence, which can be credible, in that regard. For failure to produce the original Passport or atleast a photo copy thereof, the trial Court has dismissed I.A.No.421 of 2015.

6. Even now, a copy of the said Passport has not even been placed before this Court, for it to verify and notice from the stamping therefrom and ascertain as to whether the petitioner herein has left this country, which would become evident from the exit stamping that would be put in the Passport. In the absence of any such material before the Court, it will be difficult to accept the

contention of the petitioner that he was away from the country on 21.01.2014. So far as service of summons is concerned, the evidence of P.W.1 is reliable and in the absence of any contra material, the same is bound to be taken into account and consideration.

7. I, therefore, do not see any justifiable reason to entertain this civil revision petition and it is accordingly dismissed, at the admission stage. No order as to costs.

8. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

13.04.2016.

Msr

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