THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3520 of 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful appellant/petitioner/defendant is directed against the orders dated 24.03.2015 of the learned X Additional District Judge, Krishna, Machilipatnam holding Full Additional Charge of the post of the learned I Additional District Judge passed in CMA.no.25 of 2014.

2. I have heard the submissions of the learned counsel for the revision petitioner/appellant/defendant ('the defendant, for brevity) and the learned counsel for the respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The facts that lead to the filing of this revision petition may be stated, in brief, as follows:

The sole plaintiff had brought the suit on the file of the Court of the learned Principal Junior Civil Judge, Machilipatnam against the sole defendant for eviction and recovery of damages for use and occupation. The suit was decreed on 24.02.2014. On that the defendant had filed an application in IA.no.678 of 2014 under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 requesting to set aside the *ex parte* decree dated 24.02.2014. That application was resisted by the plaintiff. At the time of enquiry before the trial Court, no oral and documentary evidence was adduced on either side. The said petition was dismissed by the trial Court by its orders dated 06.11.2014. Therefore, the unsuccessful defendant had filed the aforementioned CMA. By the order impugned, the learned Additional District Judge had dismissed the CMA confirming the order and decretal order of the trial Court. Therefore, the defendant is before this Court.

4. The case of the defendant as stated in the affidavit filed in support of his application to set aside the *ex parte* decree and as per the submissions made before this Court, in brief, is this:

The plaintiff filed the suit for eviction and other reliefs. In-fact, the defendant, who is in financial need, had approached the plaintiff about three years back for borrowing Rs.20,000/- from the plaintiff. At that time, the plaintiff had called the defendant to the Office of the Registrar stating that the defendant has to execute a registered mortgage deed in favour of the plaintiff. The plaintiff had obtained the signature of the defendant on blank paper. The Registrar also asked the defendant about the mortgage transaction only. Then the defendant had stated that he received only Rs.20,000/- from the plaintiff. Surprisingly, the defendant had received summons from the Court. From the summons served upon the defendant, he came to know that the plaintiff filed the suit for eviction of the defendant from the suit schedule property and that the suit was posted to 31.12.2013 for the appearance of the defendant. The defendant intended to engage an advocate. However, one day prior to the date of adjournment, the defendant's maternal uncle suddenly suffered heart ache. He was shifted by the neighbors to a hospital of Pallem Peddeswara Rao at Vijayawada for treatment. The defendant was informed on phone to come to the said hospital at Vijayawada. Therefore, the defendant and his wife went to Vijayawada. They were held up there for 45 days. The maternal uncle of the defendant was shifted to his native place. The defendant is the only son-in-law and also the sole male supporter of his maternal uncle and his family. The defendant's wife is the only daughter of his uncle. As the defendant and his wife were held up at the village of the maternal uncle for 139 days, the defendant was unable to contact his counsel. On 11.07.2014 the brother of the defendant, who is residing in a house adjacent to the suit house informed the defendant that one Court officer came to the house for the purpose of delivery of the same to the plaintiff. Immediately, the defendant rushed to his house and found out as to what had happened. He had then contacted his counsel. On advise, he had filed the interlocutory application to set aside the *ex parte* decree dated 24.02.2014 and for restoration of the suit to enable him to contest the suit by filing his written statement. There are no laches on his part in not filing the said application much earlier. In the circumstances stated, he was unable to file the said petition within time. Hence, the petition is filed to set aside the *ex parte* decree.

5. The defence of the plaintiff, as per the contents of his counter and the submissions made before this Court, in brief, is this:

The defendant had sold away the suit schedule property to the plaintiff and delivered possession of the same to the plaintiff. All the contra allegations in the affidavit of the defendant filed in support of the petition are false. The plaintiff had purchased the suit schedule property from the defendant. The property was mutated in the name of the plaintiff in the municipal records. The plaintiff has been paying taxes to the municipality. The defendant had requested the plaintiff in the last week of May 2012 to lease out the property to him on payment of monthly rent. The plaintiff had agreed for the same. Thus the defendant was inducted into the suit schedule property as a tenant under an oral agreement and on payment of a monthly rent of Rs.1,900/- from 01.06.2012. Subsequently, the defendant had committed default in payment of rents. The defendant had no where mentioned in his pleadings, the name of his maternal uncle. No document is filed before the Court below to show his *bona fides*. When a Court officer/field Assistant of the Court went to the schedule property for delivering the property, the defendant had obstructed him from discharging his duties and had caused inconvenience to the said officer. The plaintiff had already filed EP.no.105 of 2014 for delivery of the property. Since an obstruction was caused an application is also filed for grant of police aid. There are no *bona fides*. The petition may be dismissed.

6. The plaintiff admittedly brought a suit for eviction and recovery of damages for use and occupation. The defendant was admittedly served with suit summons and is also aware of the date of hearing. As per the defence of the defendant, the suit stood posted to 31.12.2013 for the appearance of the defendant. In-fact, the defendant stated in his affidavit that he had intended to engage an advocate on his behalf for contesting the suit. However, he had failed to either appear in person before the trial Court or engage an advocate to enter appearance on his behalf. In the said circumstances, the defendant was set *ex parte* and the suit was eventually decreed on 24.02.2014.

6.1 Now the defendant having filed the petition on 14.07.2014 to set aside the *ex parte* decree dated 24.02.2014 *inter alia* contends that the suit was posted to 31.12.2013 for his appearance and that he had in-fact intended to engage an advocate and enter appearance, but, he could not do so, as his maternal uncle had suffered heart attack on a day before the said date and that his uncle was admitted in a hospital at Vijayawada by the neighbors and that on receiving telephonic information about the same, he and his wife, who is the only daughter of his maternal uncle, had left for Vijayawada and that they were there for a period of 45 days and that later his maternal uncle was shifted to his native place and that he was with his maternal uncle for 139 days, he being the only son-in-law and male support of his maternal uncle, and that on 11.07.2014 his brother, who is residing in a house adjacent to the suit house, had informed him that a Court Officer came to deliver the property and that on that he had immediately rushed to his counsel and that on the advise of the counsel he had filed the petition to set aside the *ex parte* decree.

6.2 Thus, from the very case set up by the defendant it is clear that having received the suit summons and having knowledge of the date of hearing of the suit, he had neither appeared in person nor entered appearance though an advocate and had remained *ex parte* and had eventually allowed the suit to be decreed *ex parte*. Though he contends that his maternal uncle had suffered heart ache one day prior to the date of hearing i.e., 31.12.2013 and that his uncle had received prolonged treatment in a hospital at Vijayawada and at his native village, he did not file any medical record of his uncle in support of his said contentions. He did not even mention the name of his uncle in his pleadings. If his uncle had received treatment for about 45 days in a hospital at Vijayawada, there would certainly be some medical record. Even according to the defendant his uncle was shifted to his native village after about 45 days after his admission into a hospital at Vijayawada. The defendant had kept quiet for quite a long time and had filed the application to set aside the *ex parte* decree after more than five months. He did not even file an application for condonation of delay in seeking to set aside the *ex parte* decree. No reasons are forth coming for not filing an application seeking condonation of delay. Though the law is well settled that in a given set of circumstances, separate application for condonation of delay may not be necessary **[***vide* ***Andari Govindaiah v. Vemula Venkatamma (1995(3) ALT 685)]***, even the delay was not explained in the affidavit filed in support of the petition to set aside the *ex parte* decree and no sufficient cause was shown for condonation of the said long delay. There is no dispute with the legal proposition that when suit summons are admittedly served on the defendant, the application to set aside the *ex parte* decree has to be filed within 30 days from the date of the decree. The expression 'sufficient cause' is a cause for which the defendant could not be blamed. **[**Vide the decision of the Supreme Court in **Parimal v. Veena**[1]]. The explanation offered by the defendant for not appearing before the Court below on the date of hearing and for not filing the application to set aside the *ex parte* decree within the time allowed under law is vague and lacks inany material details. The application is filed in a casual manner without offering valid explanation for the long delay in filing the application to set aside the *ex parte* decree. Having had knowledge of the pendency of the suit, the defendant had failed deliberately to attend before the trial Court on the date of hearing or on other subsequent dates to which the matter was adjourned and had thus allowed the suit to be decreed *ex parte.* Be it noted that though the date of hearing according to the defendant is 31.12.2013, the suit was decreed *ex parte* on 24.02.2014. Therefore, even assuming for a moment that the defendant was not in a position to appear before the Court on 31.12.2013, there was ample time for him to appear before the trial Court before the *ex parte* decree was granted on 24.02.2014. However, he did not appear before the trial Court in person and also did not enter appearance though a counsel and had allowed the suit to be decreed *ex parte* on 24.02.2014. Even after the *ex parte* decree was granted, he did not make an application to set aside the *ex parte* decree within a reasonable time. When the matter is concerning a house property and the proposed defence of the defendant is that a registered document was obtained by fraud and misrepresentation in respect of a house property while lending a small amount, one would expect the defendant to be diligent and not casual. The conduct of the defendant lays bare that he is not diligent in the matter. It is well settled that the law comes to the aid of those who are diligent but not those who are indolent. As rightly observed by the Court below no documentary evidence, which he could have produced with due diligence, was produced in support of his explanation, which was offered for remaining *ex parte* and for the delay in seeking to set aside the *ex parte* decree. Therefore, the trial Court and the Court below have rightly held that the delay is deliberate and is on account of the willful conduct of the plaintiff and the same does not deserve to be condoned and that the defendant is not entitled to the relief claimed.

7. Viewed thus, this Court finds that the order impugned confirming the order of the trial Court is sustainable both under facts and in law and that there are no grounds warranting interference.

8. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this revision shall stand closed.

JUSTICE M. SEETHARAMA MURTI

18th April, 2016
Vjl

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[1] AIR 2011 SUPREME COURT 1150