

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 2577 OF 2016

ORDER :

Aggrieved by the order dated 15.02.2016 in I.A.No. 802 of 2015 in O.S.No. 105 of 2013 on the file of the Court of the Principal Senior Civil Judge, Nellore, the present Revision has been filed.

Respondent herein is the plaintiff, who filed the above-said suit for the relief of permanent injunction restraining the defendants, the petitioner herein and another from interfering with her peaceful possession and enjoyment of the plaint schedule property. The said suit was decreed *ex parte* on 19.01.2015. Hence, the petitioner has taken out an Application under Order IX Rule 13 of the Code of Civil Procedure seeking to set aside the *ex parte* decree. He has also filed I.A. No. 802 of 2015 under Section 5 of the Limitation Act to condone the delay of 191 days that had occasioned in filing the Application to set aside the *ex parte* decree. The reason set out by the petitioner for the delay was that his counsel has not informed him about passing of *ex parte* decree and subsequent thereto, he could not contact his counsel as he suffered from summer stoke and jaundice. That I.A. came to be dismissed on the ground that the petitioner has failed to explain each day's delay.

Learned counsel for the petitioner contends that the Court below has taken a pedantic view and failed to appreciate the fact that there is a substantial dispute with regard to the very title of

the property. According to the learned counsel, the delay was on account of the ill-health of the petitioner and if the same has not been condoned, he would suffer great prejudice.

This Revision has been opposed by the learned counsel for the respondent-plaintiff. He submits that the conduct exhibited by the petitioner before the Court below does not inspire much confidence. There are substantial authoritative pronouncements by the Apex Court to the effect that in the matter of condonation of delay, each day's delay has to be explained to the satisfaction of the Court, is what the learned counsel urges.

Considered the respective submissions. A perusal of the written statement that is sought to be filed before the Court below leaves no manner of doubt that even the petitioner-defendant has also been asserting his right to the subject property, based on certain sale deeds, etcetera. In other words, there appears to be a substantial dispute with regard to the rights of the parties. In those circumstances, in a suit for bare injunction, denial of a fair opportunity to the defendant to contest the case, merely on the ground of non-filing of the written statement within the time stipulated, would cause great prejudice. On the other hand, if an opportunity is given, the issue would get settled once and for all. Therefore, this Court is of the opinion that the delay ought to have been condoned.

Hence, the order dated 15.02.2016 is set aside, consequently, I.A. No. 802 of 2015 is allowed, however, subject to the petitioner paying a sum of Rs. 10,000/- (Rupees ten thousand

only) to the respondent-plaintiff within three weeks from the date of receipt of a copy of this order. It is needless to say that failure of the petitioner to adhere to the above said condition would automatically result in dismissal of the I.A.

With this, the Civil Revision Petition stands allowed. No costs.

Consequently, the miscellaneous Applications, if any shall stand disposed of.

03rd November 2016

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CHALLA KODANDA RAM, J

