

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION NO.3464 OF 2015

ORDER:

The petitioner is defendant in O.S.No.70 of 2014 on the file of the VI Additional District Judge, Kurnool. The said suit was filed for recovery of an amount of Rs.22,16,125/-. Though he engaged an advocate on 11.08.2014, another advocate filed vakalat on 15.08.2014. Thereafter, no steps were taken and *ex parte* evidence of P.W.1 was recorded. The *ex parte* decree was passed on 23.01.2015 and when he received notices in the Execution Petition, he filed I.A.No.31 of 2015 seeking condonation of delay of 15 days for setting aside the *ex parte* decree and seeking permission to file written statement. That application was dismissed along with another application in I.A.No.32 of 2015 filed under Order IX Rule 13 of the Code of Civil Procedure to set aside the *ex parte* decree.

In the present revision, we are concerned with I.A.No.31 of 2015 filed for condoning the delay of 15 days in filing the petition to set aside the *ex parte* decree.

The petitioner filed an affidavit in support of his application seeking condonation of delay, stating as follows.

“The above suit was decreed exparte on 23.01.2015. I did not receive the summons in the suit. I did not receive the plaint copy in the suit. I was not aware of the filing of the suit. Before filing of the suit, there were exchange of notices between me and respondent. by getting false endorsement, respondent seems to have secured the exparte decree. It have got good defence in the suit. I learnt about it only one week back, when I received notices in the E.P. filed by the respondent in execution of the exparte decree. Immediately, I verified from the Court and learnt about the exparte decree. default is not willful. I have good grounds to succeed in the suit.”

These facts have to be verified by the trial Court, if the trial Court thinks it fit to set aside the *ex parte* decree. However, since the delay is only 15 days, the present application ought not to have been

dismissed.

In the circumstances, the Civil Revision Petition is allowed condoning the delay of 15 days in filing the petition for setting aside the *ex parte* decree in I.A.No.31 of 2015. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(A.RAMALINGESWARA RAO, J)

20th January 2016
RRB