

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2857 of 2016

ORDER:

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This Civil Revision Petition under Section 115 of the Code of Civil Procedure 1908 by the unsuccessful petitioner/defendant is directed against the orders dated 11.06.2013 of the learned Principal Senior Civil Judge, Warangal passed in IA.no.852 of 2012 in OS.no.419 of 2012 filed under Section 5 of the Indian Limitation Act requesting to condone the delay of 262 days in filing the application to set aside the *ex parte* decree dated 14.09.2011 passed in the aforementioned suit.

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

3. To begin with, the case of the defendant in support of the request for condonation of delay, in brief, is this:

The plaintiff filed the suit for recovery of money. The suit is filed with false, frivolous and vexatious allegations. This defendant filed a written statement in the above suit. As this defendant did not appear and as there was no representation on her behalf, the trial Court was pleased to set her *ex parte* and passed an *ex parte* decree in the suit on 14.09.2011. The non-representation on behalf of the defendant on the aforesaid date of hearing before the trial Court is not intentional, but, due to the reason that the counsel was out of station. The defendant being a Government servant could not avail leave on that day. Therefore, her absence before the trial Court on the said date is not intentional. Hence, this defendant had filed an application to set aside the *ex parte* decree. But, unfortunately, a delay of 262 days (i.e., from 14.09.2011 to 03.07.2012) had occasioned in filing the application for setting aside the *ex parte* decree. The said delay is not intentional, but only due to the aforesaid reasons; therefore, the request of the defendant deserves

consideration. She has got ample grounds for success in the above suit. Taking advantage of the *ex parte* decree, the plaintiff/DHr is trying to harass this defendant and is resorting to wrongful means. If the *ex parte* decree is not set aside, this defendant suffers great and irreparable loss.

4. The contentions of the plaintiff in the counter filed before the trial Court as borne out by the record, in brief, are as follows:

The material allegations in the affidavit filed in support of the petition are false. The allegations that the counsel was out of station and that the defendant being a Government servant could not avail leave on the date of hearing are false. The defendant is not diligent in prosecuting the defence. The long delay of 262 days is not at all explained. Hence, the petition is liable to be dismissed with exemplary costs.

5. On merits, the trial Court had dismissed the petition of the defendant and had refused to condone the delay. Therefore, the aggrieved defendant is before this Court.

6. The learned counsel for the defendant while reiterating the pleaded case of the defendant would contend as follows: "The order impugned is contrary to facts and law. The Court below ought to have seen that the plaintiff is a resident of Bhadrachalam Town which is a schedule agency area and therefore, the suit ought to have been filed in the Court of the Special Assistant Agent-cum-Mobile Court and not before a Civil Court. The suit promissory note is fabricated and cause of action is invented and that the cause of action is vague without mentioning the house number. The defendant was represented by her counsel and it was his obligation to take care of the case and intimate the date of hearing and further proceedings of the case. The defendant was working as a Senior Assistant in the office of the Special Deputy Collector, Indira Sagar Project, Kalyanamandapam Road, Bhadrachalam, which is a prestigious project of the State Government. The said place is situated at a distance of 400 KMs from Warangal District. The plaintiff has chosen that distant place to harass the defendant and obtain a decree without contest. The trial Court ought to have seen that in not giving

an opportunity to contest the suit, the principles of natural justice are violated. The court below ought to have seen that the mistake is that of the counsel of defendant and that there is no negligence on the part of the defendant and that fraud was played by the plaintiff. No prejudice would be caused to the plaintiff if the defendant is allowed to put forth her case. The court below ought to have seen that the defendant had shown sufficient cause. The order of the Court below dismissing the application without discussing the consequences of such dismissal is not sustainable under law. The Court below ought to have considered the fact that the defendant need not explain each day's delay, when the *ex parte* decree causes irreparable loss and damage to the defendant. The trial Court ought to have given an opportunity to contest the suit on merits by condoning the delay in seeking to set aside the *ex parte* decree."

6.1 The learned counsel for the defendant had relied upon the following decisions: (i) **Daka Venkatrami Reddy v. Central Bank of India, Ongole**^[1]; and (ii) **Shaik Ahmed Mohammad v. Damodardas Haridas and Sons, Secunderabad**^[2]. The first cited decision was relied upon in support of the contention that when evidence or a substantial portion of evidence of the defendant has already been not recorded and when such defendant fails to appear on the date to which the hearing of the suit is adjourned, the decree passed shall be construed as an *ex parte* decree. In the case on hand, the decree passed is an *ex parte* decree is not in dispute. In the second cited decision, the question was whether, while setting aside the *ex parte* decree, the conditions imposed relating to deposit of suit costs and 1/4th of the decretal amount are onerous or not. This Court had *inter alia* held that no guidelines can be laid down exhaustively to ascertain as to whether the conditions imposed are onerous or not. The ratio in the cited decision on facts is not applicable to the instant case and is not helpful to the defendant.

7. The learned counsel for the plaintiff while reiterating the pleaded case of the plaintiff and while supporting the orders of the Court below would contend as follows:

The petition for condonation of a long delay is filed in a casual manner. No cause, much less sufficient cause, is shown and no details are urged in the affidavit filed in support of the petition. The very averments in the affidavit are by themselves sufficient to reject the request for condonation of delay. The trial Court has passed a reasoned order having adverted to the facts correctly and also the correct legal position. No grounds much less valid grounds are urged and made out for allowing the revision. The order impugned does not warrant interference. In the grounds of revision, the defendant's advocate was being blamed without offering any explanation much less valid explanation for the long delay of 262 days. Further, in the grounds of revision, the defence in regard to lack of jurisdiction of the trial Court to entertain the suit and grant the decree is raised by *inter alia* contending that the promissory note is fabricated. At the time of considering the application for condonation of delay, this Court is not obligated to examine the merits of the *ex parte* decree and if the defendant is aggrieved in that regard, she ought to have filed an appeal against the *ex parte* decree. She did not do so. Further, the said contentions in the grounds of revision are false and invented and are introduced for the first time before this Court without any basis in the pleadings urged in the affidavit. The application filed belatedly and in casual manner does not contain any acceptable grounds as contemplated under Section 5 of the Limitation Act.

8. I have bestowed my attention to the facts and given earnest consideration to the submissions. The suit for recovery of money filed by the plaintiff was decreed *ex parte*. The defendant is admittedly served with suit summons and filed a written statement having entered appearance. However, as the defendant and her counsel were absent on the date of hearing, she was set *ex parte* and an *ex parte* decree was passed. In the application filed for condonation of delay in seeking to set aside the *ex parte* decree, this Court is not obligated to examine the merits of the defence and also the merits and the sustainability or otherwise of the *ex parte* decree and the judgment passed in the suit. There are also no exceptional circumstances to go into those aspects in this case on hand. If the defendant

is aggrieved of the *ex parte* decree and judgment and wanted to challenge the same on merits, she ought to have preferred an appeal assailing the same. She did not do so. Therefore, the said contentions cannot be countenanced by this Court while considering a revision that arises from the order dismissing the defendant's application seeking condonation of delay in seeking to set aside the *ex parte* decree.

8.1 Now the short question that falls for consideration is – 'whether valid and sufficient grounds are urged and made out and sufficient cause is shown for condonation of the delay in filing the application for setting aside the *ex parte* decree?' The case of the defendant and the reasons assigned are as follows:

"This defendant filed a written statement in the above suit. As this defendant did not appear and as there was no representation on her behalf, the trial Court was pleased to set her *ex parte* and passed an *ex parte* decree in the suit on 14.09.2011. The non-representation on behalf of the defendant on the aforesaid date of hearing before the trial Court is not intentional, but, due to the reason that the counsel was out of station. The defendant being a Government servant could not avail leave on that day. Therefor, her absence before the trial Court on the said date is not intentional. Hence, this defendant had filed an application to set aside the *ex parte* decree. But, unfortunately, there was a delay of 262 days (i.e., from 14.09.2011 to 03.07.2012) had occasioned in filing the application for setting aside the *ex parte* decree. The said delay is not intentional, but only due to the aforesaid reasons; therefore, the request of the defendant deserves consideration."

The pleading is reproduced for emphasis. As rightly urged on behalf of the plaintiff, the defendant had stated in her affidavit the reasons for her absence and the absence of her counsel on the date on which she was set *ex parte*. Undeniably, a long delay of (262) days had occasioned in seeking to set aside the *ex parte* decree. In the affidavit of the defendant, there is absolutely no explanation for the said delay. In the affidavit of the defendant, it is not stated as to when she had come to know about the *ex parte* decree passed in the suit and as to when she had contacted her advocate. Her pleading and submissions do not disclose as to how many days after passing of the *ex parte* decree, she had come to know about the *ex parte* decree and that how many days after coming to know of the *ex parte* decree, the instant application for condonation of delay was filed. The present application for

condonation of delay was filed on 03.07.2012 before the trial Court though the *ex parte* decree was passed admittedly on 14.09.2011. Thus, the affidavit is bereft of all necessary and material details. As a result, from the pleadings of the defendant it appears that even after the *ex parte* decree, she did not take immediate steps with the required promptitude for filing the application for setting aside the *ex parte* decree and that she had filed the petition casually with vague allegations without pleading the material particulars. The required material details and particulars are neither pleaded nor was a sufficient cause shown for condonation of the long delay. Therefore, the very averments in the affidavit are by themselves sufficient to reject the request for condonation of delay. The statutory provision mandates that while considering the applications for condonation of delay, the applicants are required to show sufficient cause for condonation of such delay. The court cannot condone the delay in a case where the Court concludes that there is no justification for the delay. The discretion has to be exercised within the reasonable bounds known to the law. When the delay is directly a result of negligence or default or inaction of a party, such delay cannot be condoned on mere asking of that party. 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**^[3]]. In this decision, it was also held as follows: 'However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion it has to be exercised judiciously.' Having regard to the facts and the legal position obtaining it is not possible to accept the vague explanation for the long delay given by the defendant.

9. Further, it is trite to also note that a reading of the affidavit filed in support of the petition would lay bare that the petition is filed in a casual manner without giving any explanation, much less a valid explanation, and without showing sufficient cause for condonation of the long delay. 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 and had

thus allowed the suit to be decreed *ex parte*. In the affidavit filed in support of the petition, necessary ingredients are noticeably absent and the affidavit filed in support of the petition lacks in material details, which are vital for consideration and there is no explanation at all for the long delay from the date of the decree and till the date the application to set aside the *ex parte* decree was filed. In the facts and circumstances of the case, the delay cannot be condoned when the defendant who is seeking condonation of delay had failed to demonstrate that the cause that had prevented her from pursuing the remedy had sprouted before the expiry of limitation and continued and prevented her from taking necessary steps till the date the application is filed. Even when the contentions of the plaintiff were put-forth in the counter, the defendant did not choose to file an affidavit with better particulars and no additional affidavit was sought to be filed after seeking the permission of the Court. When there is no explanation for delay, the defendant cannot be permitted to plead that technical consideration shall not be allowed to outweigh the cause of substantial justice. Such a long delay cannot be condoned in the absence of showing any valid and sufficient cause as required under facts and in law. On a careful analysis of the pleadings of the defendant and the facts and circumstances it is evident that there is no valid explanation for the delay and that sufficient cause was not shown for condonation of delay. Having regard to the facts of the case and the further fact that the suit for recovery of money which is of the year 2010 was decreed *ex parte* on 14.09.2011, this Court is of the considered view that the long delay, which is due to deliberate inaction and which is directly a result of negligence or default or inaction of the defendant, cannot be condoned on mere asking and in the absence of any explanation whatsoever.

10. Having regard to the reasons, this court finds that the Court below is justified in dismissing the application for condonation of delay and that there is no illegality much less patent illegality calling for interference.

11. 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

04th July, 2016
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[\[1\]](#) 2000 (2) ALD 565

[\[2\]](#) 2009 (5) ALD 110

[\[3\]](#) AIR 2011 SUPREME COURT 1150