

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.4570 OF 2016

ORDER:

This civil revision petition is filed by the petitioner/defendant questioning the order dated 30.08.2016, passed by the I Additional Senior Civil Judge, Nellore in I.A.No.82 of 2014 in O.S.No.742 of 2011, wherein and whereby the application filed by the petitioner/defendant under Section 5 of the Limitation Act seeking to condone the delay of 620 days in filing the petition to set aside the exparte decree, was dismissed.

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

It is the case of the petitioner that he came to be aware of the suit in O.S.No.742 of 2011 on the file of the I Additional Senior Civil Judge, Nellore only in the month of December, 2013 on receipt of the notice in E.P.No.2237 of 2012 in O.S.No.742 of 2011 on the file of the Principal City Civil Judge at Bangalore. Immediately, thereafter, the petitioner obtained certified copy of the judgment and decree dated 12.04.2012 and filed an application in I.A.No.82 of 2014 in O.S.No.742 of 2011 seeking to condone the delay of 620 days in filing the application to set aside the exparte decree and judgment dated 12.04.2012. It is stated that the delay was caused as the petitioner was not being aware of the filing of the suit as he did not receive any summons in the said suit. As a matter of fact, the exparte judgment and decree was passed merely basing on the endorsement made on the cover by the postal authorities that the notice having been refused.

On the other hand, learned counsel for the respondent-plaintiff while opposing the contentions of the petitioner submits that the Court below had taken a reasonable view and only after appreciation of the

evidence available on record, refused to condone the delay having not found sufficient cause.

Perused the record. As can be seen from the material available on record, it is the specific plea of the petitioner that he did not receive the suit summons and came to be aware of the same only when the notice in E.P is received by him. Admittedly, the petitioner is residing in the same address and both the suit notices as well as the E.P notices were sent to the same address. When the petitioner had received the E.P notice, it does not stand to reason why the petitioner might have refused to receive the suit summons. Further, the suit itself is based on an alleged receipt of money lent by the respondents/plaintiffs. The receipt reads as under:

“I, Madhusudhan one of the Partner received
from K.V. Subba Reddy and M. Sreenivasulu Reddy
a total sum of Rs.3,00,000/- (Three lakhs only)”

Based on this document an exparte judgment and decree has been passed. Except the said document there is no other document filed before the Court below. The Court below had erroneously put the burden on the petitioner to prove that the suit summons were not received by him. As a matter of fact, it is for the respondents to prove that the suit summons were received by the petitioner. Even assuming that the respondents had invoked the fact that based on the postal endorsement that the petitioner refused to receive the summons in the suit, it cannot be stretched to such an extent there being any prima facie material placed before the Court below by way of examining the postal authorities in a given case. The mere endorsement itself would be taken as the receipt of suit summons. In the facts of the present case, the delay caused in filing the application cannot be said to have been explained especially considering the fact that the petitioner moved the delay condonation petition and set exparte petition within a short time of

receipt of the E.P summons in December, 2013. In that view of the matter, the delay ought to have been condoned on payment of costs.

Accordingly, the Civil Revision petition is allowed condoning the delay of 620 days in filing the application to set aside the exparte decree and judgment dated 12.04.2012, passed by the Court below in O.S.No.742 of 2011, on payment of costs of Rs.5,000/- (Rupees five thousand only) to the respondents.

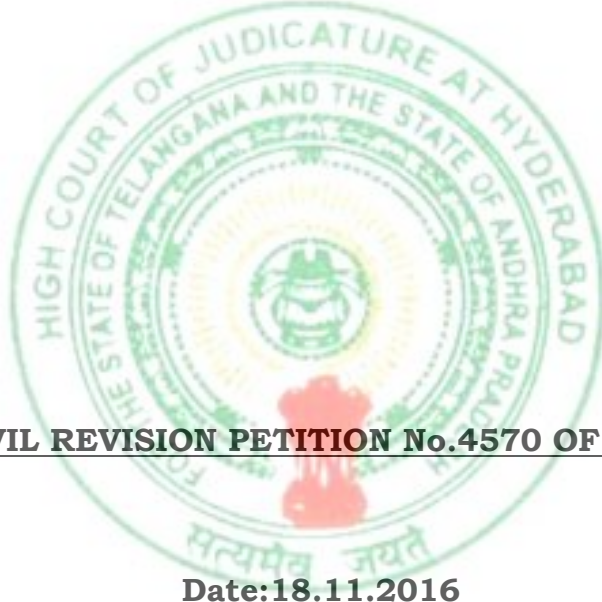
Miscellaneous Petitions, if any pending in this Civil Revision Petition, shall also stand closed.

CHALLA KODANDA RAM,J

Date:18.11.2016.
Gk.



HON'BLE SRI JUSTICE CHALLA KODANDA RAM



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