

**THE HON'BLE SRI JUSTICE S.V.BHATT**

**CIVIL REVISION PETITION No.3125 of 2016**

**ORDER:**

Heard Mr. Mr. G Subash for revision petitioners and  
Mr. N. Harinath for respondent.

2. On 11.08.2016, this Court summoned original record in O.S.No.58 of 2014 on the file of the Junior Civil Judge, Yemmiganur and is placed before the Court for perusal. This Court has permitted the learned counsel appearing for petitioners as well as respondent to peruse the original suit.

3. The defendants in O.S.No.58 of 2014 are the revision petitioners. The respondent herein filed O.S.No.58 of 2014 for specific performance of agreement of sale dated 08.05.2001. The suit schedule consists of agricultural land in an extent of Ac1.00 cents in Sy.No.381-C1 (Paiki) of Halaharvi village. On 10.07.2014, it is noted, summons to revision petitioners were served and on 08.08.2014, revision petitioners entered appearance and time till 09.09.2014 was granted for filing written statement. On 09.09.2014, the trial Court has set **defendant** (emphasis added) *ex parte* and the suit was adjourned to 24.09.2014 for plaintiff's evidence.

4. The respondent filed I.A.No.516 of 2014 for sending the suit document to the District Registrar for impounding the agreement under the Indian Stamp Act. The application was ordered in the second week of November 2014, on 13.01.2015, the report was received and on 19.01.2015, the suit was decreed. On 30.06.2015, the revision petitioners filed the instant application to condone the delay of 162 days in filing the application under Order IX Rule 13 of the Civil Procedure Code to set aside the *ex parte* decree dated 19.01.2015. The respondent opposed the said application. Through the order impugned in the revision petition, the application has been

dismissed.

Hence, the revision petition.

5. The revision petitioners have pleaded that they have engaged advocate to represent them in the suit. On 27.06.2015, the revision petitioners have come to know that the suit has been decreed.

It is further stated that the advocate appearing for the revision petitioners had not informed them the date for filing written statement. The revision petitioners, if had advice, would have certainly taken steps and filed written statement. The first petitioner claims to be an illiterate lady and representing the litigation on behalf of petitioners 2 and 3 as well, hence, prayed for condoning the delay.

6. The respondent has filed counter and disputed the veracity of each and every one of the allegations made by revision petitioners. According to respondent, the trial Court has followed the procedure in decreeing the suit *ex parte* and passing the order impugned.

The revision petitioners were set *ex parte* for non-filing of written statement and thereafter the evidence of respondent was taken on file and suit decreed. The affidavit does not disclose any cause much less sufficient cause to condone the delay of 162 days in filing a petition to set aside the *ex parte* decree.

7. The trial Court has recorded the following findings:

“14. A perusal of records, and document in O.S.No.58/2014 it shows that, the petitioner Nos.1 to 3 are set *ex parte* on 09.09.2014 and an *ex parte* decree passed on 19.01.2015 so there is nearly gap of three months to pass an *ex parte* decree and the petitioners did not take any steps to set aside *ex parte* order passed against them during that period. Further the petitioners did not denied the fact that, they were appeared in before the court regularly in a criminal case filed by the respondent/plaintiff against them. The petitioners are simply stated that, their counsel have not informed to them to file written statement within time and also passing of an *ex parte* decree. Further nearly a gap of 10 months between the decree and an *ex parte* order passed against the petitioners and to file the present petition.

15. Any prudent men could not kept quite after filing vakalath through their counsel not to enquire about the stage of the suit. Further the petitioners who are appearing before the court regularly during those period in a criminal case filed by the respondent. Further the petitioners have not denied the fact that, the respondent filed a criminal case against them and same was pending before the court during the period of pendency of the suit in O.S.No.58/2014. The above fact is clearly shows that, the petitioners are not acted diligently to prosecute the case. Hence there are no valid and tenable grounds to condone the delay of 162 days of days in filing a petition to set aside an *ex parte* decree.”

8. One of the reasons which weighed with the trial Court is that no prudent person will keep quiet without filing written statement after entering appearance in the suit. The revision petitioners are appearing in a criminal case filed by respondent and therefore, the ignorance pleaded by revision petitioners cannot be accepted. Hence, rejected the prayer for condoning the delay of 162 days in filing petition to set aside the *ex parte* decree.

9. This Court would have considered the order impugned in the revision petition by confining to the allegations in the affidavit and counter affidavit in I.A.No.248 of 2015. The original record was called for because the trial Court by referring to continuous appearance of revision petitioners in a criminal case declined to exercise discretion while condoning the delay in filing the instant application.

At the outset, it is clarified that this observation of the learned trial Judge is completely personal and not borne out by record, hence, cannot and could not have been taken note by the trial Court.

Having stated thus, this Court is constrained to point out yet another mistake in the conduct of suit by the trial Court. The relief is sought against three defendants. On 09.09.2014, the suit was set *ex parte* in respect of **one defendant** (emphasis added). It is not clear which one of the defendants is set *ex parte*. The respondent filed an application to get the suit document impounded under the Stamp Act, notice is not given to other defendants who continue to participate in the suit. Thereafter, suit document impounded, taken evidence on 19.01.2015 and *ex parte* decree for specific performance

was passed. The EP was filed on 16.03.2015. From the chronology, it appears immediately after service of notice in the EP, the instant applications to condone the delay and set aside the *ex parte* decree have been filed.

10. For the view this Court is proposing to take, further consideration of other aspects of the matter would prejudicially affect one or the other party to the suit, hence, consideration of those aspects is not undertaken. The reason given by the revision petitioners is that they were completely ignorant of the various steps in the suit and are illiterate. The suit is one for substantive relief of specific performance of agreement of sale and is the source of living for them. Having perused the original record, this Court is of the view that, though succinctly stated, there is truth in the cause given by revision petitioner and having regard to the nature of relief in suit, one or the other party should not be subjected to prejudice on account of orders passed by the trial Court. The revision petitioners have exactly stated the available ground for not filing the written statement and is germane and constitutes sufficient cause. The revision petitioners are illiterate and would not have been properly guided by the counsel or prevented by circumstances in not acting on time. The revision petitioners seek specific performance of agreement of sale dated 08.05.2001. The prayer for condoning the delay of 162 days in filing petition is ordered. Mr. Harinath submits that the very same reason is stated for setting *ex parte* decree as well and time limit may be prescribed for disposing of the suit.

11. Mr. N. Harinath requests this Court to prescribe time limit for filing written statement and direct the suit to be disposed of expeditiously.

12. The request of Mr. N. Harinath is accepted. The revision petitioners are granted thirty (30) days from today to file written statement in the suit. The trial Court is directed to dispose of the suit as expeditiously as possible, preferably, within six (6) months from the date of receipt of copy of this order. As illegal exercise of jurisdiction and discretion by the trial Court is perceived

after perusing the original record, this Court is satisfied that no party to *lis* should suffer in the conduct of trial Court, hence, the order is passed.

The civil revision petition is allowed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

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S. V. BHATT, J

August 27, 2016  
DSK