

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION NO.3058 OF 2016

ORDER:

The revision petition is maintained against the impugned order dated 05.02.2016 in I.A.No.230 of 2015 in O.S.No.2333 of 2010, which is against dismissal of the application under Section 5 of the Limitation Act to condone the delay of 826 days in filing the un-numbered application under Order IX Rule 13 C.P.C. seeking to set aside the ex parte order in O.S.No.2333 of 2010 dated 26.11.2012.

2. Notice ordered and taken pursuant to the order of this Court dated 01.07.2016, there is no representation for the respondent/ plaintiff.

3. So far as condonation of the delay, before coming to the merits of the application under Order IX Rule 13 C.P.C. from the pleadings, coming to the impugned order of the lower Court, no doubt the decree passed ex parte on 26.11.2012 was substitute service from several notices with the observation of the managed to return and willful avoidance to say that the petitioner came to know of the ex parte decree and judgment supra only on 20.12.2014 about the pendency of execution proceedings and was informed by one Safdar Mirja is with no basis that Safdar Mirja is not even a supporting deponent and that was the observation also by the trial Court from said Safdar Mirja an advocate was occupant of the premises. It is not even the case of the petitioners that they

were regularly paying the rents and pursuant to the decree there was I.A.No.763 of 2013 for determination of profits to be enquired (final decree application) and there even the petitioners herein were served with notice on 01.08.2013, suffice to say they have knowledge of the ex parte decree and from that when there is no explanation and even to set up the date 20.12.2014 on knowing through one Safdar Mirja, there is no basis it is suffice to say there is no just or sufficient cause, within the meaning of Section 5 of the Act and once that was the conclusion arrived by the trial Court in appreciation of the facts attributing the clear and categorical knowledge to the petitioner thereby held no ground to condone the delay of 826 days and once such is the case for this Court while sitting in revision, there is nothing to interfere apart from the fact of already execution effected and property taken possession by the landlord of the fruits of the decree in the eviction suit.

4. Having regard to the above, this Civil Revision Petition is dismissed. No order as to costs.

5. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

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Dr. B. SIVA SANKARA RAO, J

Date:24.10.2016

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