

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.1868 of 2014

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for brevity), by the petitioner/defendant, is directed against the order dated 16.06.2014 of the learned Principal Senior Civil Judge at Srikakulam passed in I.A.No.1074 of 2011 in O.S.No.235 of 2006 filed under Section 5 of the Limitation Act, 1963 insofar as it related to the condition imposed while allowing the said application.

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

3. To begin with, the facts necessary for consideration, in brief, are as follows:-

The plaintiff brought the suit for recovery of money against the defendant. The suit was decreed *ex parte*. The defendant filed an application to set aside the *ex parte* decree. Since delay had occasioned in filing the said application, the defendant filed the instant application in I.A.No.1074 of 2011 for condonation of delay of 1193 days in seeking to set aside the *ex parte* decree. Though that application was resisted by the plaintiff, the trial Court, by the order impugned, allowed the said application subject to the condition of deposit of half of the decretal amount into the Court within the time frame stated in the said order. Aggrieved of the condition imposed by the Court below, the present revision petition is filed.

4. The learned counsel for the defendant would submit that the defendant has got a good defence in the suit and that once the Court below has come to a conclusion that the delay is to be condoned, no further condition should have been imposed and that in any view of the matter, the onerous condition to deposit 50% of the decretal amount should not have been imposed and that after this revision is preferred, as per the interim orders dated 02.07.2014

of this Court, the defendant had already deposited rupees 40,000/- to the credit of the suit before the Court below and that it would be in the interests of justice to allow this revision petition by setting aside the onerous condition by scaling down the amount imposed in condition from half of the decretal amount to Rs.40,000/- already deposited by the defendant before the Court below.

5. On the other hand, the learned counsel for the plaintiff would submit that a reading of the affidavit filed in support of the petition for condonation of delay would show that after the defendant had remained *ex parte* in the suit, he had obtained assurance from the plaintiff that he would not press the suit and that such a contention is unbelievable and that the Court below, having considered the facts and circumstances of the case, had imposed a condition to deposit half of the decretal amount and that the Court is empowered to impose any condition while allowing the petition for condonation of delay and hence, the order impugned calls for no interference.

6. I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

7. The suit is filed for recovery of Rs.1,98,416/- on the foot of a promissory note for the principal amount of Rs.1,50,000/-. The defendant is admittedly having knowledge of the suit. He did not take steps for setting aside the *ex parte* order before the suit is decreed. Even after the suit is decreed, he did not approach the Court within reasonable time for setting aside the *ex parte* decree; and, considering the fact that the delay is abnormal, the Court below, in the facts and circumstances of the case, imposed a condition while allowing the subject application that the defendant shall deposit half of the decretal amount. The defendant is a retired teacher. Whether the plaintiff is entitled to a decree as prayed for or not shall be decided in the suit and it is not necessary to dilate on the said aspect in this Civil Revision Petition.

8. Be that as it may. Having regard to the submissions, this Court is of the considered view that instead of directing the defendant to deposit half of the

decreetal amount as directed by the Court below in the order impugned, it would be just and fair to direct the defendant to deposit Rs.60,000/- as a condition precedent for allowing the application for condonation of delay. Since the defendant had already deposited Rs.40,000/- to the credit of the suit as per the interim orders of this Court, the balance amount to be deposited as per the order now modified is Rs.20,000/-. Therefore, this Court is of the well considered view that this revision can be disposed of directing the defendant to deposit the balance amount of Rs.20,000/-, as such a course would sub-serve the ends of justice.

9. In the result, this Civil Revision Petition is allowed in part and the impugned order of the Court below insofar as the condition to deposit half of the decreetal amount is modified directing the defendant to deposit Rs.60,000/- before the Court below. It is made clear that the amount of Rs.40,000/- already deposited by the defendant shall be given credit to and the defendant shall deposit the balance amount of Rs.20,000/- before the Court below within a period of six (06) weeks from the date of the receipt of a copy of this order. On such deposit, the subject petition in I.A.No.1074 of 2011 shall stand allowed. On such compliance, the Court below shall take up the application to set aside the *ex parte* decree and consider the same in accordance with the procedure established by law, as expeditiously as possible.

There shall be no order as to costs.

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

M.Seetharama Murti, J

08th March, 2016
Bvv