

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.723 of 2016

ORDER:

The revision petitioners are the defendants in O.S.No.7 of 2013 on the file of II Additional District Judge, Madanapalle, Chittoor District. The suit was numbered from its filing on 18.02.2013 and summons to the defendants ordered through Court and registered post. From the court summons and registered post, hearing fixed on 28.03.2013 from 02.03.2013. There is a registered post endorsement of both the defendants of same address, which is the address in seeking to set aside the exparte decree for not a case of not residing in that address, of door locked, as addressee left hence returned to sender. The court summons of the hearing date also clearly show door locked and when enquired with neighbours they could not say when they could come and neighbours refused to receive. Thereby of no possibility of their coming to receive by waiting affixed to the door. It is on 28.03.2013 from said endorsement of through Court and registered post, the trial Court ordered fresh notice though not required again through court and registered post by fixing hearing date to 30.04.2013 and to 18.06.2013. When from the presiding officer on leave posted as per the docket proceedings to 21.06.2013 and the endorsement of the through court and registered post notices of the defendant Nos.1 and 2 as self same. Again from 21.06.2013, it is posted to 05.07.2013 by ordering substituted service to publish in Eenadu daily newspaper of Chittoor District for the district circular as the address of the defendants at Kammagadda Veedhi, Madanapalle Town, Chittoor District. The publication is filed as per the hearing date fixed on 16.08.2013 and defendants since called absent they were set exparte and later after receiving the evidence of plaintiff through chief affidavit with reference to document, the suit was decreed exparte on 10.10.2013.

It is said ex parte decree sought for setting aside in I.A.No.460 of 2014 by the 2 defendants against the 5 plaintiffs supra, along with application to condone the delay of 322 days under Section 5 limitation Act. The affidavit averments show that they came to know through paper publication of 11.08.2014 of Eenadu local district edition of the suit filed and I.A.No.250 of 2014 filed in the suit for passing of final decree pursuant to the preliminary decree and matter from 11.08.2014 was posted to 01.09.2014 for appearance of the defendants and one S.Madhusudhan Reddy filed a complaint against them for the offence under Section 406 and 420 IPC in crime No.26/2013 dated 07.02.2013 and they were arrested and produced before JFCM, Madanapalle and from 06.06.2013 they were in judicial custody till they enlarged on bail on 13.02.2014. The 2nd defendant filed I.P.No.21 of 2013 on the file of Senior Civil Judge, Madanapalle, to adjudge her as insolvent which is also pending. The plaintiff has obtained the decree in the suit by substituted service showing residential address of the defendants as 15-116-5-1, Kammagadda Street, Madanapalle and when the suit was posted for their appearance to 16.08.2013 as they were in judicial custody since 06.06.2013, there was no opportunity for them to know about the publication or to participate in the suit proceedings that resulted in setting them ex parte in passing an ex parte decree dated 10.10.2013 and they got contest thereby ex parte decree to be set aside by condoning the delay of 322 days in its filing. The application was filed on 23.08.2014. According to them they were in judicial custody till they were enlarged on bail on 13.02.2014, even thereafter from 13.02.2014 there is no tenable explanation for the period in between. In fact the suit claim is based on registered mortgage dated 05.12.2012 and suit proceeded by registered notice dated 06.02.2013 and there is a due service by the bailiff as contemplated by order 5 CPC from the door locked, affixed from the neighbours could not state when the defendants could come, as contemplated though generally bailiff is

supposed to state these facts on oath and if not from the statement Court generally to examine the bailiff in setting exparte. In fact on the first service before 28.03.2013 they were not set exparte as fresh notice ordered as referred supra and even fresh notice with same endorsement. It is only thereafter a substituted service is ordered needless to say the first service through Court had the bailiff be examined on oath could be a sufficient service for no further notice or further service is required from a combined reading of Order 5 Rules 15 to 19 CPC. In fact the so called custody of the petitioners in crime referred supra was since 06.06.2013. A perusal of the record shows twice the summons returned endorsed as door locked prior to 06.06.2013 not only through Court but also registered post and it is not a case that the defendants not residing in that address as therefrom application shown the self same address thereby there is no infirmity or defect in the process of the summons and nature of service taken duly sufficient much less to set aside the exparte decree on that ground of any improper service besides the explanation to Order 9 Rule 13 CPC itself is clear of the same not even a ground. Even the proposition of **Radhey Shyam Vs. Mst. Lalli and Others**^[1] a single Judge expression of Jaipur Bench no way favourable to the revision petitioners/defendants on the scope of Order 9 Rule 13 discussed supra.

However as referred supra even from the date they came out from judicial custody on 13.02.2014 till the date of filing the application to set aside the exparte decree by condoning the delay of 322 days vis-à-vis till 23.08.2014 for about 6 months, there is no explanation at all, sufficient to say there are no grounds to set aside the exparte decree much less to interfere with the dismissal order of the lower Court.

Accordingly, the revision petition is dismissed.

Consequently, miscellaneous petitions, if any shall stand

closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 16.08.2016
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[\[1\]](#) AIR 1979 Rajasthan 103