

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION Nos.4422 & 4500 of 2015

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COMMON ORDER:

C.R.P.No.4422 of 2015 is preferred against the order dated 11.09.2015 passed by the VI Additional Senior Civil Judge, Visakhapatnam in I.A.No.731 of 2015 in O.S.No.1081 of 2014. C.R.P.No.4500 of 2015 is filed against the order dated 11.09.2015 passed in E.A.No.124 of 2015 in E.P.No.161 of 2015 in O.S.No.1081 of 2014.

Notices have been served on the respondent and proof of service has been filed. However, neither has any counsel entered appearance on behalf of the respondent nor has the respondent appeared before this Court. Heard Sri M.Radhakrishna, learned counsel for the petitioner.

The respondent herein is the plaintiff in O.S.No.1081 of 2014 filed for eviction, for payment of arrears of rent, and for damages. After the decree was passed, the respondent-plaintiff filed E.A.No.124 of 2015 in E.P.No.161 of 2015 seeking delivery of the suit schedule property. The petitioner herein filed I.A.No.730 of 2015, under Order IX Rule 13 C.P.C, to set aside the *ex parte* decree dated 11.09.2015, I.A.No.731 of 2015 to condone the delay of 124 days in filing the petition to set aside the *ex parte* decree, and E.A.No.124 of 2015 to stay all further proceedings in E.P.No.161 of 2015 till their application, to set aside the *ex parte* decree, was heard and decided.

By a common order dated 11.09.2015, all the three applications, filed by the petitioner, were dismissed. The Court below observed that, except to state that she was an illiterate woman, no explanation was furnished by the petitioner for the delay of 124 days in filing the petition to set aside the *ex parte* decree; she had appeared before the

Court on 17.09.2014, and was asked to file her written statement by 14.10.2014; atleast on that day, she did not turn up and did not file her written statement; and it was clear that, on 24.10.2014, the petitioner/defendant was not suffering from any ailment, and the cause shown by her was not satisfactory. Taking note of the fact that she was bedridden only for one day, the Court below observed that no reason, much less an acceptable reason, was given to condone the delay in filing the application to set aside the *ex parte* decree.

It is necessary to note that, in the affidavit filed before this Court in CRP.MP.No.5856 of 2015, the petitioner asserts that, on the very same day i.e., 11.09.2015 when the order under revision was passed, the Court below issued a warrant and posted the matter to 30.10.2015 for report of delivery; the same was returned on 19.09.2015 with an endorsement door was locked; on an application being filed on 22.09.2015, to grant police aid, the Court below passed an order on 29.09.2015 granting police aid, and to break open the lock; and, based thereon, the petitioner was driven out from the suit schedule property.

While it does appear that the explanation furnished by the petitioner for the delay of 124 days, in filing the petition to set aside the *ex parte* decree, is cryptic, it cannot be lost sight of that the delay of 124 days is not so inordinate as to justify dismissal of an application to condone the delay in setting aside an *ex parte* decree more so as, in addition to eviction, the respondent-plaintiff seeks arrears of rent of Rs.2.12 lakhs and damages of Rs.2.20 lakhs i.e., for a sum in excess of Rs.4.30 lakhs with interest.

I consider it appropriate, in such circumstances, to allow I.A.No.731 of 2015 and condone the delay of 124 days in filing the application to set aside the *ex parte* decree, on condition that the petitioner deposits Rs.5,000/- (Rupees five thousand) as costs to the credit of the suit within four weeks from today. Failure on the part of the petitioner herein to deposit the said amount, would revive the order

passed by the Court below. Needless to state that, on deposit of costs of

Rs.5,000/- by the petitioner, it is open to the respondent herein to withdraw the said amount with the permission of the Court below.

In so far as E.A.No.124 of 2015 is concerned, the fact remains that the petitioner has already been evicted from the suit schedule property. Sri M.Radha Krishna, learned counsel for the petitioner, would submit that the petitioner is entitled to seek restitution in terms of Section 144 C.P.C. It would be wholly inappropriate for this Court to examine the petitioner's entitlement for restitution, as that is not the subject matter of the revision proceedings before this Court. Suffice it to make it clear that, in case the petitioner makes any such application later, the said application shall be considered by the Court below in accordance with law, without being influenced by any observations made in this order.

Both the Civil Revision Petitions are disposed of accordingly. No order as to costs. Miscellaneous petitions, if any, pending in these Civil Revision Petitions shall stand closed.

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RAMESH RANGANATHAN,J

12.02.2016

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Note: Issue CC in one week

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v v