

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.178 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India, challenging the order, dated 15-12-2016 in I.A.No.177 of 2016 in O.S.No.510 of 2015 on the file of the I Senior Civil Judge, City Civil Court, Hyderabad.

2. Petitioners herein are the defendants, whereas the respondent herein is the plaintiff in O.S.No.510 of 2015, which was filed for delivery of vacant possession of the suit property to the plaintiff and for mesne profits. On 24-11-2015, the said suit was decreed *ex parte* after recording evidence of the plaintiff as P.W.1 and marking the documents as Exs.A1 to A8.

3. The petitioners (defendants) filed the present interlocutory application under Section 5 of the Limitation Act, 1963 to condone the delay of 77 days in filing the petition to set aside the *ex parte* order, dated 24-11-2015. The trial Court after considering the material available on record, dismissed the said application. Aggrieved thereby, the present revision is preferred by the petitioners (defendants).

4. The only ground urged before the trial Court is that the summons in the suit were not served so as to enable the petitioners to appear before the Court. It is further contended that the petitioners are brothers and they are residing under one roof bearing Municipal Door No.5-3-426 to 428, in an extent of 80 square yards situated at Top Khana, Begum Bazar, Hyderabad. The respondent obtained

an *ex parte* decree with a *mala fide* intention by creating fake and fraudulent documents. The petitioners came to know about passing of an *ex parte* decree only on 03-03-2016 when the Bailiff came with police aid in E.A.No.99 of 2016. But, they resisted delivery of possession and filed an execution application under Order XXI Rule 26 CPC before the Executing Court to stay execution in view of pendency of I.A. before the trial Court to condone the delay in filing the petition to set aside the *ex parte* decree.

5. The respondent (plaintiff) through his G.P.A. filed counter denying material allegations *inter alia* contending that the suit summons were served on the petitioners and that the application was filed with a *mala fide* intention to drag on the proceedings. The petitioners are not entitled to get condonation of delay of 77 days in filing the petition to set aside the *ex parte* decree.

6. During hearing, learned counsel appearing for the petitioners submits that he obtained certified copies of suit summons in O.S.No.510 of 2015 on the file of the I Senior Civil Judge, City Civil Court, Hyderabad and produced the same before this Court to prove that summon was not served on the petitioners.

7. Petitioners are four in number and they are admittedly residing in one house as members of the family. Certified copies of summons in O.S.No.510 of 2015 shows that the summons were served on M.Krishna (2nd defendant) on 10-07-2015 on behalf of all the defendants in the suit.

8. According to Order V Rule 15 CPC, service of summons on any one of the elder member of the family is sufficient service. When the suit summons was served on

the defendant and the defendant failed to appear before the Court, the Court can pass an order setting him *ex parte* by following the procedure under Order IX Rule 6 CPC. Accordingly, the trial Court passed an *ex parte* order against the petitioners and thereafter, an *ex parte* decree was passed since no application under Order IX Rule 7 CPC was filed by the petitioners. Therefore, the suit summons was served on the elder member of the family of the petitioners. That apart, the petitioners themselves admitted that they are residing together as members of one family under one roof. Therefore, service of summons on M.Krishna (2nd defendant) is sufficient service in terms of Order V Rule 15 CPC.

9. Mr.K.Lakshman, learned counsel appearing for the petitioners raised several contentions regarding balance of convenience etc., in view of termination of E.P. after effecting delivery of possession. But, that would never be a consideration in an application filed under Section 5 of the Limitation Act. It is further contended that the signature of 2nd defendant was forged on the suit summons. But that cannot be enquired into while exercising the jurisdiction under Article 227 of the Constitution of India.

10. This revision is filed under Article 227 of the Constitution of India. Such jurisdiction can be exercised only in limited circumstances. This court can exercise revisional jurisdiction under Article 227 of the Constitution of India in limited circumstances and nature of the jurisdiction is supervisory over the subordinate courts or the tribunals under the control of the High Court. The power of revision under Article 227 of the Constitution of India is limited to find out whether the order under challenge, passed by the subordinate court or tribunal within their jurisdictional limits and the main intention of exercising both

administrative and judicial control under Article 227 of Constitution of India is to keep them within the bounds of their jurisdiction and not to allow them to transgress from their jurisdictional limits, but not otherwise. The Court can exercise jurisdiction under Article 227 of the Constitution of India under the following circumstances:

- “a) When the inferior court assumes jurisdiction erroneously in excess of power.
- b) When refused to exercise jurisdiction.
- c) When found an error of law apparent on the face of record.
- d) Violated principles of natural justice.
- e) Arbitrary or capricious exercise of authority or discretion.
- f) Arriving at a finding which is perverse or based on no material.
- g) A patent or flagrant error in procedure.
- h) Order resulting in manifest injustice.
- i) Error both on facts and law or even otherwise.”

Similarly, the Court cannot exercise its powers under Article 227 of the Constitution of India in the following circumstances:

- "a) Where the only question involved is one of interpretation of deed;
- b) On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;
- c) To correct erroneous exercise of jurisdiction, as a Court of revision;
- d) To set aside an intra vires finding of the fact, except where it is founded on no material or is perverse;
- e) To correct an error of law, not being an error apparent on the face of the record;
- f) To interfere with the intravires exercise of discretionary power, unless it is violative of principles of natural justice;
- g) The Court shall not interfere on a merely technical ground which would not advance substantial justice."

Article 227 of Constitution of India deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction and such power can also be exercised suo motu. It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in **STATE (N.C.T. OF DELHI) V. NAVJOT SANDHU@ AFSAN GURU**¹ that under Article 227 of Constitution of India, the High Court can interfere with the orders of the Subordinate Courts.

11. As the trial Court having found that summons were served under Order V Rule 15 CPC is sufficient, I find no grounds to interfere with the order passed by the trial Court exercising powers under Article 227 of the Constitution of India as I find no legal infirmity warranting interference of this Court.

12. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any pending in this revision shall stand closed.

M.SATYANARAYANA MURTHY, J

DATED: 25-07-2017.

Hsd

¹ (34) 2005 (3) ALT (Cr1.) 125 (SC)

