

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4833 of 2016
and
CIVIL MISCELLANEOUS APPEAL No.792 of 2016

COMMON ORDER:

Since the facts of the case, the issues involved and the parties are one and the same in both these matters, they are being disposed of by this common order.

2. Civil Revision Petition No.4833 of 2016 is filed by the petitioner challenging the order, dated 08.08.2016, of the learned IV Additional District Judge, Guntur, passed in I.A.No.711 of 2016 in M.V.O.P.No.525 of 2011, filed under Section 5 of the Limitation Act, 1963, seeking to condone the delay of 307 days in filing the application to set aside the *ex parte* Award, dated 25.04.2015.

2.1 Civil Miscellaneous Petition No.792 of 2016 is filed the same petitioner, challenging the order, dated 08.08.2016, passed by the same learned Judge in I.A.No.712 of 2016 in M.V.O.P.No.525 of 2011 filed under Order IX Rule 13 of the Code of Civil Procedure, 1908, requesting to set aside the *ex parte* Award, dated 25.04.2015.

3. I have heard the submissions of the learned counsel for the revision petitioner/1st respondent in the claim petition, that is, the owner of the insured vehicle and of the learned Standing Counsel for the Insurance Company/2nd respondent in the claim petition. The first respondent in both these matters is the claimant. I have perused the material record.

5. On the Tribunal allowing the claim petition and passing an Award fastening the liability on the insurance company and directing it to first pay and recover the amount from the insured, the insurance company, having paid the compensation to the claimant, filed an Execution Petition in E.P.No.162 of 2016 for recovery of the amount from the owner by seeking his arrest and detention in the civil prison. Thereafter, the insured/owner of the vehicle filed I.A.No.711 of 2016 and I.A.No.712 of 2016 on the original side before the Tribunal seeking to condone the delay of 307 days in filing the application for setting aside the *ex parte* Award, dated 25.04.2015; and, requesting to set aside the *ex parte* Award, dated 25.04.2015 passed in M.V.O.P.No.525 of 2011. Both the said applications were resisted by the insurance company by filing counters. By orders, dated 08.08.2016, passed separately in the said applications, the Tribunal dismissed both the applications. Aggrieved thereof, the CRP and the CMA are preferred by the insured/owner of the vehicle.

6. When the C.M.A. was listed before this Court, on 17.10.2016, this Court, while ordering 'Notice Before Admission', granted interim stay of all further proceedings in the aforementioned E.P., subject to the petitioner/insured/owner of the vehicle depositing 1/4th of the Award amount with interest besides costs on or before 07.11.2016 to the credit of the said E.P., and directed to list the C.M.A. along with C.R.P.No.4833 of 2016 on 07.11.2016.

7. At the hearing, the learned counsel for the petitioner/insured would submit that the petitioner/insured has got fair chances of success in the claim petition and that the insured, after receiving notices in the claim

petition, approached the officers of the insurance company and submitted all the documents and that after satisfying themselves, the officers of the insurance company assured him that they would contest the case and therefore, he did not appear before the Tribunal and raise any contest though he has got tenable contest and that in the circumstances, the Award has come to be passed after setting him *ex parte* and that having come to know about passing of the Award after receiving notices in the execution proceedings, he filed the subject applications and that in the circumstances, the delay has occasioned and that there are no wilful laches or negligence on the part of the petitioner/insured. The Learned counsel for the petitioner/insured would alternatively submit that the petitioner/insured is prepared to deposit another 1/4th of the Award amount if the *ex parte* Award is set aside and accordingly prayed that the *ex parte* Award may be set aside subject to the said condition in the interest of justice.

8. Per contra, the learned Standing Counsel for the 1st respondent/insurance company, while drawing the attention of this Court to the defence of the insurance company in the subject applications, stated that the petitioner/insured has not properly explained the delay and that the insurance company, having paid the Award amount to the claimant, is entitled to recover the same from the petitioner/insured/owner of the vehicle as per the terms of the Award and that there are no merits in the revision as well as the appeal.

9. Having given earnest consideration to the facts and submissions and also the explanation offered by the petitioner/insured, this Court is satisfied that sufficient cause is shown for condoning the delay in filing the

application to set aside the *ex parte* Award, dated 25.04.2015; and also to set aside the *ex parte* Award, dated 25.04.2015, subject however, to imposition of certain conditions.

10. Accordingly, C.R.P.No.4833 of 2016 is allowed by setting aside the order, dated 08.08.2016, passed in I.A.No.711 of 2016 by the Court below. Consequently, the delay of 307 days in filing the application to set aside the *ex parte* Award, dated 25.04.2015, is condoned.

11. Resultantly, C.M.A.No.792 of 2016 is allowed by setting aside the order, dated 08.08.2016, passed in I.A.No.712 of 2016 by the Court below. Consequently, the *ex parte* Award, dated 08.08.2016, passed in M.V.O.P.No.525 of 2011 is set aside, subject to the condition of the appellant/insured/owner of the vehicle depositing another 1/4th of the Award amount with interest to the credit of E.P.No.162 of 2016, within a period of four (04) weeks from the date of receipt of a copy of this common order. On failure of the petitioner/insured to make such deposit, this C.R.P. and the C.M.A. shall stand dismissed and the orders of the Court below, which are impugned in the revision and the appeal, shall stand restored.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in both these matters shall stand closed.

27th March, 2017
Bvv

M. Seetharama Murthi, J