

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1147 OF 2014

ORDER:

This civil revision petition is filed under Section 115 C.P.C challenging the order in I.A.No.249 of 2013 in O.S.No.3206 of 2011 dated 26.03.2014 passed by the V Junior Civil Judge, City Civil Court, Hyderabad, dismissing the application filed under Section 5 of the Limitation Act to condone the delay of 400 days in filing the petition.

The petitioner filed condone delay petition under Section 5 of the Limitation Act to set aside the *exparte* decree and judgment dated 29.06.2012 on the ground that the petitioner was residing at Srinagar Colony but not at O.U. Colony, Shaikpet, Hyderabad. The petitioner produced several documents in support of his contention. But, without serving notice, the Trial Court passed a decree, ordering notice to a wrong address. Therefore, in the absence of any notice in the suit, passing any decree without the knowledge of the petitioner is sufficient ground to condone delay of 400 days and prayed to condone the delay of 400 days in filing the petition.

The respondents opposed the several contentions, mainly on the ground that the petitioner did not explain the inordinate delay of 400 days in filing the application to set-aside the *exparte* decree and judgment dated 29.06.2012. The respondents further contended that the process server of the Court who served summons on the petitioner made an endorsement that the

petitioner is not willing to receive summons and the Court having satisfied about the endorsement of the process server passed an exparte decree and judgment subsequently and thereby there are no grounds to condone the delay in filing the petition.

During hearing, learned counsel appearing for both sides reiterated the contentions raised in the respective pleadings before the Trial Court.

Considering rival contentions and perusing the material available on record, ***the point that arise for consideration is “whether the petitioner was prevented from sufficient and reasonable cause beyond his control in filing the petition to condone the delay of 400 days to set-aside the exparte decree and judgment dated 29.06.2012.”***

According to the petitioner, the petitioner is residing at H.No.8-3-988/34/7/1, Srinagar Colony, Hyderabad, whereas, the respondents have shown that the petitioner was residing at Plot No.543, OU Colony, Shaikpet, Hyderabad.

In support of his contentions, learned counsel for the petitioner produced voluminous documentary evidence, viz., Aadhaar Cards, Voter ID, Identity card issued by Election Commission, Driving Licence, Statement of Encumbrance on Property and other documents to establish that, by the date of filing the suit in the year 2011, the petitioner is residing at H.No.8-3-988/34/7/1, Srinagar Colony, Hyderabad, whereas, the summons were sent to address at Plot No.543, OU Colony, Shaikpet on 04.01.2012. Thus, it is evident from the material on record that the petitioner is a resident of H.No.8-3-988/34/7/1,

Srinagar Colony, Hyderabad. Even on the date of filing the suit in the year 2011, summons were sent to the address at Shaikpet and those summons were returned by the Process Server with an endorsement of refusal. The Trial Court satisfied that the petitioner refused to receive the summons and set-exparte, based on the written endorsement of the Process Server. When suit summons were not tendered to the petitioner, as he is a resident of Srinagar Colony, question of his refusal cannot be accepted. That apart, the Trial Court did not insist affidavit from the Process Server, as required under the Rules and he was not examined as witness before the Court. In such a case, based on the written endorsement, the Court cannot conclude that the petitioner refused to receive summons. Therefore, the petitioner is not aware of filing of the suit, passing of a decree, since no summons were sent to the address where he is permanently residing and tendered. Consequently, the reason explained for the delay in filing the petition is sufficient cause, since the petitioner was prevented by a cause which is beyond his reasonable control.

Further, the Trial Court did not consider the actual address of the petitioner where the petitioner is permanently residing and without insisting the affidavit from the Process Server, as required under the Rules and even without recording the statement of the Process Server, believed that the petitioner refused to receive summons and dismissed the petition erroneously.

In view of the voluminous evidence produced before this Court, it is established that the petitioner is a resident of H.No.8-3-988/34/7/1, Srinagar Colony, Hyderabad and no

notices/summons were served at the permanent address of the petitioner. Therefore, the petitioner was prevented by a cause beyond his reasonable control which is sufficient to condone the delay, since length of delay is not a ground.

Accordingly, the order in I.A.No.249 of 2013 in O.S.No.3206 of 2011 dated 26.03.2014 passed by the V Junior Civil Judge, City Civil Court, Hyderabad, is set-aside, while condoning delay of 400 days to set-aside the exparte decree and judgment dated 29.06.2012.

In the result, the civil revision petition is allowed.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:12.06.2017

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