

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION Nos.3071 of 2017 & 4187 of 2017

COMMON ORDER:

C.R.P.No.3071 of 2017 is filed by the petitioner-defendant, against the order, dated 03.03.2017, in I.A.No.246 of 2012 in O.S.No.76 of 2006, dismissing the petition filed by the petitioner-defendant to condone the delay of 193 days in filing the petition under Order IX Rule 13 C.P.C., whereas the C.R.P.No.4187 of 2017 is filed by him against the order, dated 03.03.2017, passed by the learned Senior Civil Judge, Proddatur, in I.A.No.454-A of 2017 in O.S.No.76 of 2006, dismissing the petition filed by him under Order IX Rule 13 C.P.C.

2. Since the parties in both the civil revision petitions are one and the same, both the Civil Revision Petitions are disposed of by way of a common order.

3. The respondent-plaintiff filed a suit in O.S.No.76 of 2006 for recovery of the amount covered by suit pronote. It appears that summons were ordered to the petitioner-defendant, but they were returned, as he was absent in his address. Hence, service by way of publication in Vaartha Daily Newspaper on 21.11.2017 was ordered. However, the petitioner-defendant did not appear and hence, he was set *ex parte* on 21.11.2007 and thereafter, the trial Court passed a decree on 22.06.2011. Subsequently the respondent-plaintiff filed E.P.No.117 of 2011 for execution of the decree. Thereafter, the petitioner-defendant filed I.A.No.454-A of 2012 under Order IX Rule 13 C.P.C. to set aside

the *ex parte* decree. Since there was a delay of 193 days, the petitioner-defendant also filed I.A.No.246 of 2012 to condone the delay. The submission of the petitioner-defendant is that no summons were served on him in the suit and the respondent-decree holder might have managed the process and obtained *ex parte* decree and his absence in the suit for all those days was neither willful nor intentional. The petitioner-defendant, thus, prayed to condone the delay of 193 days in filing the petition under Order IX Rule 13 C.P.C. He also prayed to allow the petition under Order IX Rule 13 C.P.C. and set aside the *ex parte* decree and grant him an opportunity to contest the suit. The respondent-decree holder opposed both the petitions and the trial Court dismissed both the petitions by observing that the petitioner-defendant was continuously absent in his address and he did not explain as to when he came to know about the *ex parte* decree and he has also not properly explained the delay.

4. Heard Sri G. Rama Sharma, learned counsel for the petitioner and Sri G. Ramachandra Reddy, learned counsel for the respondent.

5. The submission of the learned counsel for the petitioner is that the petitioner-defendant is not residing in the same address and there were some disputes between him and his brothers and they did not inform him about the service of summons, which were sent to the said address when he was away from his home to other places on account of his business and that was why he could not know about the proceedings of the suit and it is only after filing of the E.P., he came to know about the suit

proceedings and immediately he filed petitions to set aside the *ex parte* decree and, therefore, there was no willful negligence on his part. Learned counsel further submitted that since the suit is for recovery of huge amount, the trial Court ought to have given him an opportunity to contest the suit to vindicate his defence. To show his *bona fides*, the petitioner-defendant is ready to deposit a reasonable amount as directed by this Court and contest the suit by following the time frame as directed by this Court. He, thus, prayed to allow both the civil revision petitions.

6. Opposing the civil revision petitions, learned counsel for the respondent would submit that the petitioner resides in the very same address even now also and he refused to receive the summons in the suit and, therefore, substitute service by way of publication was ordered and thereafter also, the petitioner-defendant did not approach the Court and, therefore, he was rightly set *ex parte* by the lower Court and an *ex parte* decree was passed. At a belated stage, the petitioner-defendant filed the petition to set aside *ex parte* decree with an inordinate delay of 193 days. Having found no merits, the trial Court rightly dismissed both the petitions. He, thus, prayed to dismiss both the civil revision petitions.

7. The submission of the petitioner is that on account of his business, he was moving to Bombay and some other places during the relevant period and his family members were residing elsewhere and on account of the disputes with his brothers, the service of summons was not informed to him by them and that was

the reason why he could not approach the trial Court to contest the suit.

8. Be that as it may, having regard to the fact that the suit is for recovery of money and if an opportunity is not given to the petitioner-defendant to contest the suit, his rights would be jeopardized, this Court is of the view that both the civil revision petitions can be allowed, of course, on suitable terms.

9. In the result, both the Civil Revision Petitions are allowed and the *ex parte* decree, dated 21.11.2007, is set aside on the condition of the petitioner-defendant depositing one-half of the decretal amount in the trial Court within a period of six (6) weeks from the date of receipt of a copy of this order. The petitioner-defendant shall file his written statement within a period of four (4) weeks from the date of receipt of a copy of this order, if already not filed and participate in the trial scrupulously. Since the suit is of the year 2006, the trial Court shall dispose of the suit on merits within a period of four (4) months from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous applications pending, if any, in both the civil revision petitions shall stand closed.

JUSTICE U.DURGA PRASAD RAO

Dated: 11th September, 2017

Note: Issue C.C. by 15.09.2017.

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