

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2231 of 2016

ORDER:

This petition is filed under Section 115 of CPC challenging the order dated 20.11.2015 in I.A.No.971 of 2014 in O.S.No.1956 of 2011 passed by the VIII Addl. Senior Civil Judge, Ranga Reddy District dismissing the application filed under Section 5 of Limitation Act to condone delay of 616 days in filing the petition under Order IX Rule 13 CPC to set aside the *ex parte* decree, dt.06.11.2012.

2. It is the case of the petitioner that he availed the loan of Rs.4,50,000/- from the respondent on 15.11.2008 in the presence of witnesses and executed a promissory note in favour of the respondent. The petitioner was carrying on real estate business for the last more than 10 years, he had transactions with P.Shiva Kumar, Madhukar, K.Snivas Reddy and PMC Infra Developers represented by AK Chakravarthy, the petitioner could not repay the amount as there was mutual settlement between the petitioner and the respondent in the presence of elders and the petitioner agreed to execute a sale deed conveying Plot No.392 admeasuring 315 square yards in Sy.No.1133, 1141 to 1149 part of Ganapur village with those persons who owed to the petitioner and the petitioner agreed to execute a deed of conveyance in favour of the respondent, the respondent agreed to receive the said property towards discharge of loan, accordingly executed a registered sale deed dt.16.07.2010 in favour of P.Sareena Kumari daughter of the respondent and later paid Rs.60,000/- towards registration charges in a calendar case pending before the Court at Thungathurthy for the offence punishable under Section 138 of N.I. Act and thereby the petitioner did not appear as the claim was settled before the elders and court, thus, the petitioner was

prevented by sufficient cause and prayed to condone delay of 616 days in filing the petition under Order IX Rule 13 of CPC.

3. The respondent filed counter denying the material allegations *inter alia* contending that the petition is filed to drag the execution petition for some more time and the petitioner on receipt of suit summons appeared through his counsel and filed vakalat, but failed to contest the matter and thereby it is evident that the petitioner received suit summons and the explanation offered by the petitioner for his absence before the court is settlement, but, it is not substantiated by any evidence and prayed for dismissal of the petition.

4. Upon hearing argument of both the counsel, the trial Court on the ground that the petitioner failed to substantiate the contention that the petitioner was prevented by sufficient cause to condone abnormal delay of 616 days while observing that the respondent is a senior citizen and retired employee who cannot even walk without support, thereby the matter cannot be dragged for some more time, dismissed the petition.

5. Aggrieved by the order passed by the trial Court, the present revision is filed raising various contentions mainly third party affidavits of relatives of respondent filed, but they were not considered by the trial Court while deciding the petition filed under Section 5 of the Limitation Act, apart from that the sale deed discloses that the execution of sale deed in favour of P.Sareena Kumari in lieu of discharge of debt. But, this fact was not taken by the trial Court into consideration and the trial court also gave undue preference to the respondent who is senior citizen without deciding the petition on merits and dismissed the petition.

6. During hearing, learned counsel for the petitioner Sri S.R. Sanjeev Kumar while reiterating the contentions raised in the grounds of revision, drawn the attention of this court to the third party affidavits which were

filed by the petitioner who are none other than the close relatives of the respondent which clinchingly established that there was compromise between the parties and paid Rs.60,000/- before the Court at Thungathurthy where a calendar case is pending for the offence under Section 138 of N.I. Act and even in the counter also the petitioner did not deny the execution of the documents but pleaded otherwise. Therefore, in the absence of any specific denial, dismissal of petition declining to condone the delay of 616 days is illegal and prayed to set aside the impugned order allowing this revision petition.

7. Whereas, the learned counsel for the respondent Sri Syed. Mohd. Ali supported the order passed by the trial court in all respects while contending that the respondent is a senior citizen who advanced amount from his retiral benefits and not in a position to move without the support of any person and if the *ex parte* decree is set aside, the respondent will put to serious inconvenience and prayed to dismiss the petition.

8. On considering the rival contentions, the point that arises for consideration is:

“Whether the petitioner is prevented by a cause which is beyond reasonable control of the petitioner, if so, whether delay of 616 days be condoned in filing the petition to set aside the ex parte decree dt.06.11.2012?”

9. The main endeavour of the counsel for the petitioner is that the suit claim is settled by executing a registered sale deed, dt.06.07.2010 in favour of P. Sareena Kumari who is the daughter of the respondent. A copy of the sale deed is placed on record to establish that the petitioner executed a sale deed in favour of P.Sareena Kumari and if the contents of the document are looked into, the petitioner appears to have received the sale consideration in cash, that too, the sale deed was executed in

the month of July, 2010; whereas the suit was filed in the year 2011 i.e. almost 2 years prior to filing of suit. It is not his case that the petitioner did not receive suit summons and having received summons engaged counsel, but did not contest the matter on account of settlement referred above. But, the settlement is not supported by any material except the affidavits filed by the third parties who are closely related to the respondent allegedly. But, placing reliance on third parties is not acceptable though they are related to the respondent since there is every possibility of enmity between the parties. But, at this stage it cannot be said that on account of suit pending whether there was enmity or not between the parties. However, it is for the petitioner to bring to the notice of the court about the settlement of the claim when he engaged counsel and contested the matter for some time, but remained *ex parte*. Since the suit promissory note was executed on 15.11.2008 as per the allegations made in the plaint and the sale deed was executed on 16.07.2010 i.e. almost completion of 1½ years approximately. But, the recital of document would show otherwise and the consideration under the sale deed was received in cash as per the recitals. If really the sale deed was executed in lieu of discharge of debt, the question of receiving cash consideration would not arise. Therefore, it is difficult to accept the contention that there was compromise, thereby he did not contest the suit. If really the petitioner paid the amount or discharged the debt due, he would have brought to the notice of this court through the counsel whom he engaged at least by filing a memo for recording full satisfaction and the amount has been paid outside the court. But, no such steps were taken. Therefore, it is difficult to accept the contention that the petitioner was prevented by cause which is beyond his reasonable control to condone the abnormal delay of 616 days.

10. The other contention raised by the counsel for the petitioner is that the respondent did not deny the settlement who pleaded that the settlement was towards discharge of interest and registration charges. The value of the property as per the recitals of the document is Rs.2,52,000/- and the debt due under the promissory note was Rs.4,50,000/-, interest accrued thereon was Rs.2,34,500/-. In such a case, it is difficult to accept that the petitioner executed a registered sale deed in lieu of discharge of debt due for Rs.7,34,500/- i.e. the suit amount. Hence, the execution of sale deed only towards interest has to be accepted prima facie without conceding. Even otherwise, the petitioner has to explain each and every day's delay to get the delay condoned in filing the petition under Order IX Rule 13 of CPC. But, except general explanation, the petitioner did not give any specific explanation why he did not contest the matter and remained *ex parte* before the trial Court having engaged a counsel on receipt of summons. Therefore, the delay cannot be condoned at this stage as I find that the petitioner was not prevented by a cause which is beyond his reasonable control.

11. The revision petition is filed under Section 115 of CPC and the jurisdiction of this court is limited and this court can exercise jurisdiction only when the subordinate court fails to exercise its jurisdiction that vested on it or exercised jurisdiction which is not vested on it or whether the court exercised such jurisdiction illegally and irregularly. But, here the trial Court exercised its jurisdiction and declined to condone abnormal delay of 616 days in filing the petition under Order IX Rule 13 CPC to set aside the *ex parte* decree. The petitioner failed to satisfy any of the conditions to exercise jurisdiction under Section 115 of CPC. This court cannot reverse the finding recorded by the trial Court since the finding is based on purely discretion.

12. In the result, revision petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:12-07-2017
Ccm



HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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