

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No.6261 of 2016

ORDER:

The revision petitioner herein is the plaintiff in OS No.433 of 2008 on the file of the Principal Senior Civil Judge, Ongole. She filed the said suit against the defendants for recovery of certain amount borrowed under a pronote and an *ex-parte* decree was passed on 16.03.2009. Seeking execution of the said decree, she filed EP No.81 of 2014 for realization of the decretal amount by attaching the amount of the defendants lying in OA No.182 of 2008 before the Debt Recovery Tribunal, Visakhapatnam.

2. The defendants/ JDrs after receipt of the notices in EP No.81 of 2014 on 22.04.2014, filed IA No.190 of 2016 in OS No.433 of 2008 seeking condonation of delay of 2365 days in filing a petition under Order 9 Rule 13 CPC. The trial court allowed the said application by order dated 23.11.2016 condoning the delay of 2365 days, with the following observations:

“At this juncture, I perused the docket in the original suit 433/ 08. The record shows the plaint was presented on 22.12.08 and it was found registered on the same day. Coming to the suit summons, orally the cause title of the plaint showing the defendants 2 to 5 are partners of D1 partnership firm. Their residential addresses are shown in the cause title as per which it is found they are not residents of same locality and they have been residing at various places. A perusal of the summons, no address was noted except the writing the names of all defendants and showing all are residents of Ongole. The process server report shows as if summons were served on defendants at a place in the presence of one A.Balakrishna S/o Balachandra Rao, Ongole. Admittedly all defendants are not residents of same place nor it is found that they were served as partners at the firm address.

The other point is suit was filed on 22.12.2008 whereas these summons were stated as served on 24.12.2008 itself i.e. within 2 days. A perusal of the signatures of all the defendants it is not known how D3 to D5 had signed at the same place, though their residential addresses are different. The date mentioned at the signatures of all defendants was found mentioned by the same person as per the digits found to be naked eye.

Hence, there is a doubt arises as to whether the summons were really served on defendants within two days from the date of suit or whether they were manipulated as if they were served. The court observed on 11.02.2009 on the docket that service held sufficient and D1 to D5 called absent set ex parte. Hence it is clear that the petitioners herein are found having no knowledge of the suit and since there is no possibility of service of summons by the process server immediately after issuing process and when infact there was no handover of summons to the plaintiff it can be safely said that the defendant, were not served with summons as found in process server report hence it is clear that they have no knowledge of the suit.”

3. This court by order dated 30.12.2016 while calling for records in OS No.433 of 2008, granted stay of all further proceedings.

4. When the record is perused, it *prima facie* shows the signatures of D.1 to D.5 on the summons said to have served on them by the Process Server in the presence of the witnesses after identifying them. Basing on the endorsement made by the Process Server, the lower court expressed a doubt about the service of summons on the defendants and allowed the said application, without recording any reasons.

5. When a doubt is expressed, the lower court should have recorded the reasons with regard to service of suit summons on the defendants. But without recording any reasons, on the basis of own opinion, erred in condoning the enormous delay of 2365 days in filing the petition under order 9 Rule 13 CPC.

6. Since this court satisfied that the order passed by the trial court is erroneous, as no proper reasons were recorded by the trial court on the service of summons, the order dated 23.11.2016 passed in IA No.190 of 2016 in OS No.433 of 2008 is set aside and the matter is remanded to the Principal Senior Civil Judge, Ongole, for hearing the application afresh in accordance with law. If the parties want to lead any evidence, liberty shall be given to them for leading such evidence and the lower court is directed to dispose of the said application after hearing both sides, within a period of six months from the date of receipt of a copy of this order. The lower court shall not construe any observations made in this regard as finding on merits of the case.

7. The civil revision petition is, accordingly, allowed. No order as to costs. Pending miscellaneous petitions, if any, in this revision, shall stand closed.

Date: 19.04.2017

Note: Registry is directed to return the records in OS No.433 of 2008 to the lower court.

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A. RAMALINGESWARA RAO, J

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