

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.R.P. Nos.3092 and 3093 of 2017

COMMON ORDER:

The Civil Revision Petitions are filed against the orders dated 11.04.2017 in I.A. Nos.1973 and 1972 of 2016 in O.S. No.68 of 2009 respectively by the Principal District Judge, Kadapa, YSR Kadapa District.

2) The plaintiff in O.S. No.68 of 2009 is the revision petitioner and the defendants are the respondents in both the revisions. The suit is based on the contract for sale dated 20.09.2006. The suit was decreed *ex parte* on 31.12.2014 and E.P. No.51 of 2016 was filed by the plaintiff/Decree Holder. It is after service of the notices in E.P., the defendants 1 to 4 among 9 defendants filed I.A. Nos.1972 and 1973 of 2016 for condoning the delay of 594 days in preferring the application to set-aside the *ex parte* decree and for setting aside the *ex parte* decree respectively with averments that they were not served with suit summons but the Court summons shows that they are managed as if refused and even prior to filing of the E.P. the defendants did not receive any notice from plaintiff and it is after filing execution petition, on enquiry and verification of record, they came to know that the *ex parte* decree was passed. Hence, there is a delay of 594 days in filing the petition to set-aside the *ex parte* decree and thereby, to be condoned.

3) By separate orders dated 11.04.2017, both the petitions were allowed, subject to payment of costs of Rs.500/- for condoning the delay of 594 days and payment of costs of Rs.500/- on the petition to set-aside the *ex parte* decree. It is impugning

the said orders, the two revisions maintained by the plaintiff against the defendants 1 to 4 by showing the other defendants as proforma parties.

4) The contentions in the grounds of both the revisions in nut shell are that the impugned orders of the Court below are contrary to law, lack of evidence and without consideration of the inaction and lack of bonafides on the part of the defendants 1 to 4. The trial Court should have seen that the defendants were served with suit summons to the same address and even served notices in the Execution Petition; and their explanation is that they were not served with the notices and managed of refusal is incorrect and thereby, the impugned orders are liable to be set-aside for no grounds to allow, even with any pragmatic approach.

5) Whereas the learned counsel for the respondents/ defendants 1 to 4 supported the orders of the lower Court.

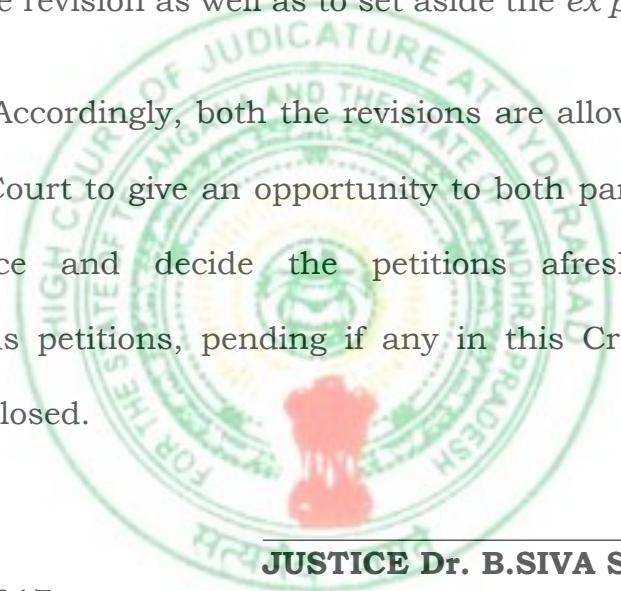
6) Heard learned counsel for the petitioner and learned counsel for the respondents and perused the impugned orders of the lower Court.

7) The lower Court did not discuss with regard to existence of sufficient cause. It is the contention that the endorsement of refusal of the suit summons is not correct. Once such is the case, as the endorsement is there, at best, if at all, on oath from the presumption against their contention, they ought to have chosen to examine the process server and other simultaneous services through Court and by Registered Post.

8) The trial Court did not consider the same. The defendants 1 to 4 not even chosen to adduce any evidence for their say of they were not served with summons and the endorsement of refusal is managed one, which the Court would not have accepted.

9) Having regard to the above, the impugned orders of the lower Court in allowing the applications to condone the delay on paltry payment of Rs.500/- and setting aside the *ex parte* decree on paltry payment of Rs.500/- without considering the material properly as to existence of sufficient cause for delay in preferring the revision as well as to set aside the *ex parte* decree.

10) Accordingly, both the revisions are allowed remanding to the trial Court to give an opportunity to both parties to adduce oral evidence and decide the petitions afresh on merits. Miscellaneous petitions, pending if any in this Criminal Petition shall stand closed.



JUSTICE Dr. B.SIVA SANKARA RAO

Date: 12.2017
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Date: .12.2017

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