

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CIVIL REVISION PETITION Nos. 4682, 4696 and 4919 of 2008

COMMON ORDER:

These civil revision petitions are arising out of the order dated 30.06.2008 passed in I.A.No.82/2007 in O.P.No.77/2006; I.A.No.84/2007 in O.P.No.81 of 2006; and I.A.No.82/2007 in O.P.No.79/2006, respectively, by the A.P. Cooperative Tribunal, Visakhapatnam.

2. The Care Visakha Mutually Aided Cooperative Credit Society Ltd. (for short, 'the Society'), filed the aforesaid Original Petitions for recovery of an amount of Rs.30,000/- with interest against the revision petitioner- A. Srinivas Rao, and two others who are respondents in the aforesaid Original Petitions. An ex-parte decree was passed in the original petitions on 13.07.2006.

3. The revision petitioner filed interlocutory applications before the Tribunal under Section 151 of CPC praying to condone the delay of 371 days in filing the petitions to set aside the ex-parte decree dated 13.07.2006. It is stated in the affidavits filed in support of the interlocutory applications that he was one of the Directors of M/s Naidu Exports Private Limited from 30.09.2000 till his resignation as Director on 29.08.2001. As director of the said company, he borrowed a sum of Rs.30,000/- on behalf of the company. He also stood as Guarantor for the loan transactions of M/s B. Ramunaidu and G. Somunaidu, who were also employees of M/s Naidu Exports Private Limited. The loan amount of Rs.30,000/- lent by the Society was invested by him in M/s Naidu Exports Private Limited towards working capital of the company and that the said loan was not a personal loan. Subsequently, due to personal problems,

he resigned from the company and a resolution to that effect was also passed and the Registrar of Companies was informed and proceedings were also issued by the Registrar of Companies to the effect that he ceased to be the Director of the company with effect from 29.08.2001. It is further stated in the affidavits that he was not aware of the O.P. proceedings, and he came to know through his neighbour that the process server of the Court had made enquiries about him, and thereafter he enquired through his counsel and found that an ex parte decree was passed on 13.07.2006 against him and two others. He further stated that he never received any notice from the Tribunal regarding the O.P. proceedings and therefore he could not attend before the Court. His absence was neither willful nor deliberate and, therefore, sought for condoning the delay of 371 days in preferring the applications for setting aside the ex parte decree dated 13.07.2006 passed against him.

4. The Tribunal dismissed the interlocutory applications observing that the notice ordered against the revision petitioner returned as “not claimed”, and the address of the revision petitioner on the notice as well in the petition filed by him are one and the same and, therefore, the claim of the revision petitioner that he is not residing in the given address cannot be accepted.

5. Heard the arguments of learned counsel for the revision petitioner. Notices served on the respondents, but none appeared on their behalf.

6. Learned counsel for the revision petitioner submits that the revision petitioner was not aware of the proceedings before the Tribunal, and the proceedings have taken place behind the back of the revision petitioner. Learned counsel further submits that the revision petitioner has not

received any notice from the Court and the decree was passed behind his back, and the revision petitioner wants an opportunity to contest the matter and therefore prayed to set aside the exparte decree dated 13.07.2006.

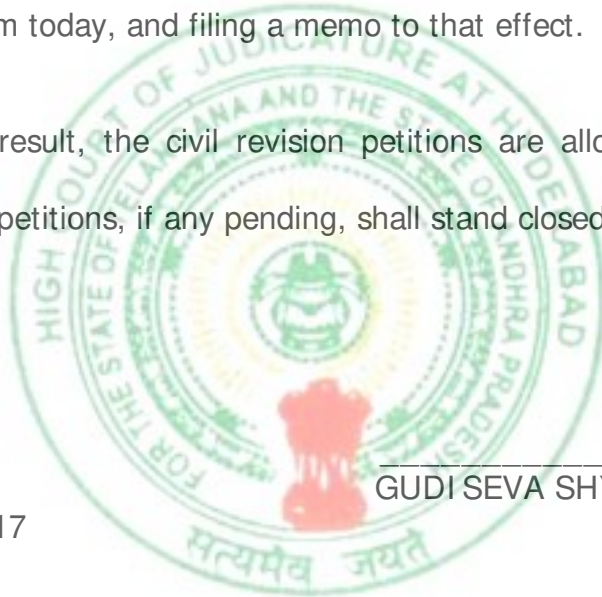
7. In view of the submissions made by the learned counsel for the revision petitioner and the reasons explained by the revision petitioner in the affidavits, the delay of 371 days in filing the petitions to set aside the exparte decree dated 13.07.2006, is condoned on payment of costs of Rs.1,000/- payable to the High Court Legal Services Committee, within two weeks from today, and filing a memo to that effect.

8. In the result, the civil revision petitions are allowed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

21st March, 2017

KSM

GUDI SEVA SHYAM PRASAD, J



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