

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.5240 OF 2017

ORDER:

The present Civil Revision Petition is preferred by the petitioner - defendant in I.A. No.364 of 2016 in O.S. No.282 of 2013, on the file of the learned Additional Senior Civil Judge, Srikakulam, questioning the order, dated 28.07.2017, passed by the learned Judge, dismissing the application filed under Section 5 of the Limitation Act, 1963, to condone the delay of 809 days in filing an application to set aside the *ex parte* decree, dated 16.04.2014, passed against him in the said suit.

2. Heard Sri Aravala Rama Rao, learned counsel for the revision petitioner, and Sri Saripalli Subrahmanyam, learned counsel for the respondent.

3. The learned counsel for the revision petitioner would submit that the petitioner, after *ex parte* decree was passed, filed E.A. No.311 of 2016 to set aside the *ex parte* order, dated 30.09.2015, passed in E.P. No.5 of 2015 against him, and the learned Principal Senior Civil Judge allowed the said E.A. on condition of depositing 1/10th of E.P. amount i.e., Rs.39,639/- by 06.02.2017, and the same was complied, and the learned Additional Senior Civil Judge ought to have taken the circumstances into consideration and ought to have restored the suit to file by allowing the I.A., but erroneously dismissed the said I.A. on

the ground that he failed to explain the delay in setting aside the *ex parte* decree.

i) The learned counsel also would submit that the reason assigned by the learned Additional Senior Civil Judge in dismissing the application is not proper.

4. Per contra, the learned counsel for the respondent would submit that the ground taken by the revision petitioner that he had no knowledge of passing of *ex parte* decree till he made the application in I.A. No.364 of 2016 is palpably false, and the very fact that he contested in the M.P.T.C. Elections and won in it and even attended the meetings prior to filing the said application would completely rule out the stand as to his absence in the village as asserted by him in the affidavit. Therefore, according to him, that there is no sufficient cause to condone the delay and rightly the learned Judge dismissed it.

5. Only one circumstance appears to be in favour of the revision petitioner, that being allowing execution application No.311 of 2016 while setting aside the *ex parte* order, dated 30.09.2015, passed in the E.P. But, would it constitute sufficient cause to condone the delay of 809 days is the issue which requires an answer.

6. The learned counsel for the revision petitioner is unable to state whether the said E.A. No.311 of 2016 was associated with any application for condonation of delay, for which there is no answer.

Even otherwise, the fact that the petitioner contested in the MPTC Election and won in the said election and, thereafter, participated continuously in the meetings held, at least not less than half a dozen times prior to making the aforesaid application, would all sufficient to note that though, he had an occasion to learn passing of the decree and though, he was physically present in the village in connection with those occasions for considerable spells, the averment made by him that he was not at all in the village gets falsified, making it further a negative allegation being made only for the purpose of getting the delay of 809 days condoned in an attempt to get the *ex parte* decree set aside. The sufficient cause, as contained in Section 5 of the Limitation Act, 1963, certainly, does not come to the rescue of the petitioner when looked at the conduct of the petitioner from the aforesaid circumstances. The mere fact that E.A. 311 of 2016 was allowed is no ground to aid the petitioner in showing the sufficient cause. The reasons, thus, shown to condone the delay do not constitute sufficient cause, besides being incorrect, as referred to in the above. There is no merit in the present Civil Revision Case.

7. Accordingly, the Civil Revision Case is dismissed maintaining the order under challenge passed by the learned Additional Senior Civil Judge. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the present revision, stand closed.

A. SHANKAR NARAYANA, J

December 15, 2017.
Mgr

