

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP No.2612 of 2010

ORDER ::

The petitioner herein who is 3rd defendant in the suit OS No.133 of 1996 assails the order of the trial Court dated 31-05-2010 passed in IA No.60 of 2008 in dismissing the application filed under Section 5 of the Limitation Act r/w. Section 151 CPC to condone the delay of 660 days in filing a petition to set aside the ex-parte decree passed by the Court on 28-04-2006.

2. Learned counsel for the petitioner strenuously contended that suit summons were not served upon the petitioner and the address was wrongly mentioned and therefore in the interest of justice the trial below ought to have condoned the delay and given an opportunity to the petitioner to contest the case on merits. On the other hand, learned counsel for the respondent no.1-plaintiff contended that the respondent no.1 being plaintiff filed IA No.662 of 1996 for attachment of properties and notices were served on the defendants 1 and 2 including the petitioner who is defendant no.3. It is also stated that the petitioner approached respondent no.1-plaintiff for up-liftment of cotton yarn and the respondent no.1-plaintiff being the firm, involved in the business of cotton yarn, obliged the petitioner and sold the stock to him. It is also stated that the petitioner-defendant no.3 is the sister's son of defendant no.2 who was pursuing the suit proceedings and, therefore, the petitioner has knowledge about the suit proceedings.

3. It is to be seen that the petitioner-defendant no.3 and other defendants 1 and 2 were set ex-parte as long back as on 28-04-2006.

Application to condone the delay of 660 days in filing a petition to set aside the ex-parte decree could be filed in the year 2008. No plausible reasons are mentioned to condone the delay of 660 days, muchless sufficient cause shown. The Court below relied on the decision of the Supreme Court in SUNIL PODDAR vs. UNION OF BANK OF INDIA (2008) CLT 135 (SC) wherein the Supreme Court observed that where the defendant has notice of the date of hearing of the suit and he had sufficient time to appear and answer the claim of the plaintiff, an ex-parte decree cannot be set aside even if it is established that there was some irregularity in service of summons. In this case, even assuming that the suit summons are not served, the petitioner approached the plaintiff in relation to the suit transaction and has knowledge of the suit proceedings. That apart, the trial Court, on evidence found that there is no sufficient cause shown to condone the delay of 660 days in filing a petition to set aside the ex-parte decree.

4. It is settled proposition of law that in matters of condonation of delay, in a catena of decisions, the Supreme Court observed that where sufficient cause is shown, refusal to condone the delay would result foreclosing a suitor from putting forth his cause and there is no presumption that delay in approaching the Court is always deliberate. But in this case, the explanation for the delay set up by the petitioner-defendant no.3 is not worth inspiring the confidence of the Court. The conclusion arrived at by the trial Court in exercise of its discretion, cannot be interfered unless it is pointed out perversity in passing such an order. In the facts and circumstances of the case, there is no reason to take a different view than the one arrived at by the trial Court. In the

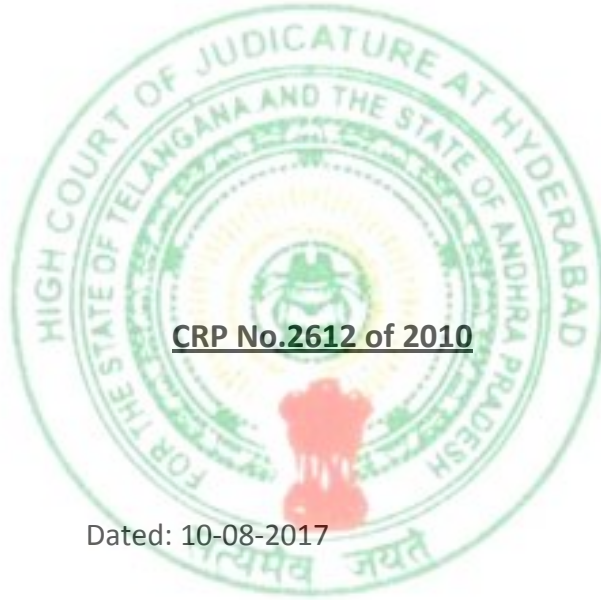
circumstances, I do not see any reason to interfere with the impugned order and the civil revision petition is accordingly dismissed. Miscellaneous petitions, if any pending in this case shall also stand dismissed. There shall be no order as to costs.

A. RAJASHEKER REDDY, J

Dated: 10-08-2017
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