

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.4085 AND 4346 of 2011

COMMON ORDER :

These revisions are filed, under Article 227 of Constitution of India, by the petitioners-defendants, challenging the docket order, dated 18.08.2011, passed by the I-Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, Hyderabad, in I.A.No.1159 of 2011 in O.S.No.523 of 2010 and in I.A.No.1160 of 2011 in I.A.No.1491 of 2010 in O.S.No.523 of 2010 respectively, dismissing the petitions filed under Order IX Rule 7 C.P.C.

2. The petitioners filed petitions under Order IX Rule 7 C.P.C. to set aside the *ex parte* order on the ground that the deponent-1st petitioner was suffering from ill-health, thereby he could not contact his counsel for preparation of written statement or to appear before the Court and on account of non-filing of written statement and non-appearance, the Court set the petitioners *ex parte*, their absence neither intentional nor wanton but for the reason that the 1st petitioner was suffering from ill-health.

3. The trial Court, by order, dated 18.08.2011, dismissed the petitions on the ground that the petitioners executed a registered sale deed bearing document No.769 of 2011, dated 25.03.2011, for the land in Sy.No.30/A, measuring Ac.5.20 gts., out of Ac.6.20 gts. situated at Gorrekal Village, Alladurg Mandal, Medak District, and a sale deed bearing document No.775 of 2011, dated 25.03.2011, in faovur of M/s.Laxmi Narsimha Agro Industries and alienated the

properties to third parties and the petitioners are not prevented by a good or sufficient cause, declined to set aside the *ex parte* order.

4. Aggrieved by the order passed by the trial Court, the present revisions are filed raising several contentions mainly on the ground that the 1st petitioner was ill. But, this fact was not considered by the trial Court and that apart the sale deeds were executed and registered with the Sub-Registrar, Jogipet, Medak District, which is away to the place where the Court is located and mere execution of registered sale deed at Jogipet, Medak District, is not a ground to deny the relief. The trial Court ought to have concluded that the petitioners were prevented by a sufficient or good cause to set aside the *ex parte* order.

5. During hearing, learned counsel for the petitioners while reiterating the contentions, drawn the attention of this Court to the judgment of Supreme Court in **Civil Appeal No.10581 of 2013 (Manoharan v. Sivarajan and others)** and contended that the petitioners are not interested to drag the matter and they also did not adopt any tactics to avoid the litigation or to delay the proceedings. He also drawn the attention to para 9 of the judgment, wherein the Apex Court referred the judgment of Apex Court in **State of Bihar and others v. Kameshwar Prasad Singh and another**¹, on the strength of these two judgments, it is contended that the Court can afford an opportunity to decide the matter on merits. Learned counsel

¹ (2000) 9 SCC 94

for the petitioners also drawn the attention of this Court to the judgment in **Azmath Baig v. T.Naresh Kumar Singh and another** ².

6. According to Order IX Rule 7 C.P.C. where the Court has adjourned the hearing of the suit *ex parte* and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

7. Thus, it is clear from Order IX Rule 7 C.P.C. when the defendant was set *ex parte*, he can at the subsequent stage, if any, application is filed assigning good cause for his non-appearance on the previous date of adjournment, the Court can set aside such *ex parte* order.

8. In the present case, the only cause shown by the petitioner is that due to ill-health the deponent-K.Yadaiah i.e., 1st petitioner, the petitioners could not contact their counsel for preparation of written statement and appear before the Court. The petitioners are two in number viz., Kotha Yadaiah and Kotha Arvind and both are majors. If really, the 1st petitioner was suffering from ill-health as contended by him, nothing prevented the 2nd petitioner-K. Arvind to contact the counsel and file written statement. But, conveniently the 1st petitioner filed affidavit stating that he was suffering from ill-health that by itself is not a good cause. More over, no piece of evidence is

² 2006 (3) ALD 64

brought on record to establish that he was suffering from ill-health. In the absence of any reason, much less a good cause which prevented the petitioners from appearing before the Court and filing written statement, no order can be set aside on mere asking, in the name of substantial justice. Learned counsel for the petitioners drawn the attention of this Court to a judgment in Manoharan's case referred supra, where the Court while deciding an appeal against an application filed to condone delay in filing appeal, adverted to the judgment of Apex Court in State of Bihar's case (1 supra), held that power to condone delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing the cases on merits.

9. But, the later judgment in **Lanka Venkateshwarlu (dead) by L.Rs. v. State of Andhra Pradesh and others**³, the Supreme Court held that the concepts such as 'liberal approach', 'justice oriented approach', 'substantial justice' cannot be employed to jettison the substantial law of limitation. In the absence of any cause, much less, sufficient cause which prevented the petitioners from filing the petition. Therefore, the later judgment of Apex Court in Lanka Venkateshwarlu (3 supra) is contrary to the principles laid down. In such case, the later judgment has to be taken into consideration. Even otherwise, those two judgments are under Section 5 of the Limitation Act, not under Order IX Rule 13 of C.P.C. More over, the petitioners

³ (2011) 4 SCC 363

have to make out a good cause which is not denied anywhere. But in **Arjun Singh v. Mohindra Kumar**⁴, the word ‘good cause’ was considered and held as follows:

There is no material difference between the facts to be established for satisfying the two tests of “good cause” and “sufficient cause” and there cannot be a “good cause” which is not “sufficient” as affording an explanation for non-appearance, nor conversely a “sufficient cause” which is not different from “good and sufficient cause” which is used in this context in other statutes. If, on the other hand, there is any difference between the two, it can only be that the requirement of a “good cause” is complied with on a lesser degree of proof than that of “sufficient cause”.

10. In view of the law declared by the Apex Court in Arjun Singh’s case (4 supra) good cause can be equated with the sufficient cause. In the present case, the good cause which allegedly prevented the petitioners from filing written statement is ill-health of 1st petitioner, which is not supported by any material. On the other hand, the 2nd petitioner was not suffering from any ill-health and nothing prevented him to appear and file written statement. Apart from, the allegation that the 1st petitioner was suffering from ill-health is a patent lie in view of execution of sale deed bearing Nos.769 of 2011 dated 25.03.2011 for the land Sy.No.30/A, measuring Ac.5.20 gts. out of Ac.6.20 gts. situated at Gorrekal Village, Alladurg Mandal, Medak District, and execution of another sale deed bearing No.775 of 2011

⁴ AIR 1964 SC 993

dated 25.03.2011 in favour of M/s.Laxmi Narsimha Agro Industries is sufficient to disbelieve the ground mentioned in the affidavit by the 1st petitioner. It is evident from the conduct of the petitioners that they are not evincing any interest, but sold the property despite pendency of petition under Order XXXVIII Rule 5 C.P.C. for attachment of the properties covered by those two sale deeds. Apart from that the petitioners appeared before the concerned Sub-Registrar and executed sale deeds, which fact would show that the 1st petitioner was not suffering from any ill-health as complained by him. Hence, the cause shown by the petitioners cannot be accepted holding that it is a good cause. Hence, the trial Court passed the order under challenge exercising its jurisdiction strictly adhering to the law declared by the Courts. Learned counsel for the petitioners relied on judgment of this Court Azmath Baig's case (2 supra), wherein the Apex Court hold that lapse of more than three years in moving the application to set aside the *ex parte* order, the Court set aside the *ex parte* order by imposing costs. The said judgment relied on by the learned counsel for the petitioners is not applicable to the present facts of the case. It is not known whether the petitioners have made out a good cause to set aside the *ex parte* order. But, here the petitioners did not make out a good cause to satisfy this Court to set aside the *ex parte* order as required under Order IX Rule 7 C.P.C. Hence, I find no ground to exercise the power judicial review under Section 227 of Constitution of India, which is limited and supervisory in nature. Therefore, the

order passed by the trial Court is upheld, finding no merits in the case.

Hence, the revision deserves to be dismissed.

11. Accordingly, the revisions are dismissed.

12. As a sequel, miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

M. SATYANARAYANA MURTHY, J

15th June 2017

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