

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION No.4755 OF 2016

ORDER:

Vide the present petition, the petitioner has assailed the order dated 22.06.2016 passed in I.A.No.858 2013 in O.S.No.115 of 2000 on the file of IV Additional Senior Civil Judge, Guntur, whereby the IV Additional Senior Civil Judge condoned the delay of 2341 days by setting aside the ex parte decree subject to deposit of entire amount and on payment of costs of Rs.10,000/- to be paid to the petitioner/plaintiff on or before 08.07.2016.

2. Heard learned counsel for the petitioner/plaintiff and the learned counsel for the respondent/defendant.

3. Learned counsel appearing on behalf of the petitioner/plaintiff submits that the petitioner had filed suit for recovery of an amount of Rs.2,00,000/-. Thereafter, the respondent/defendant has filed written statement, however, stopped appearing in the Court below. Consequently, vide order dated 07.12.2006, the respondent was proceeded ex parte. Thereafter, the respondent filed I.A.No.858 of 2013 for condoning delay of 2341 days in filing the petition to set aside ex parte decree.

4. Learned counsel for the petitioner submits that in the affidavit filed in support of the I.A. No.858 of 2013 filed by

the respondent, it is stated that he filed written statement by engaging an advocate and that due to lack of communication between him and his counsel, he was unable to pursue the matter. However, the Court below passed ex parte decree on 07.12.2006. It is further stated that due to communication gap only, he was unable to pursue the matter as he had good case to succeed in the main case and that he had already filed his written statement. However, he came to know about the ex parte decree when he received summons in E.P. from the Court below.

5. Learned counsel for the petitioner further submits that the suit vide O.S.No.115 was filed in the year 2000 and the respondent/defendant pursuing the matter since 07.12.2006. And thereafter, how it can be believed that he lost the track of the proceedings pending before the Court below. Therefore, there is no justification in the application to explain the delay of 2431 days. However, the Court below allowed the said petition and set aside the ex parte decree dt. 07.12.2006. He further submits that the Court below has ignored the counter affidavit filed on behalf of the petitioner whereby stated that there are no bonafides on the part of the respondent/defendant to file a petition to condone delay and to set aside the ex parte decree petition. After seven years of passing the decree, the respondent/defendant filed the above said I.A. without any merit. The reasons stated in the petition are very vague, and which is not permissible under the law,

as such, delay would not have been condoned by the Court below. Moreover, the suit was pending from the last seven years.

6. On a perusal of impugned order dated 22.06.2016, the Court below observed that the main suit was filed by the petitioner herein against the respondent/defendant claiming for damages. The respondent had also filed written statement in the main suit and he was proceeded ex parte during the course of the trial in the main suit. The reason for the absence of the respondent is that due to communication gap he was unable to proceed the suit.

7. In the chief affidavit of PW.1, he categorically sworn that he engaged an advocate at Narasaraopet, who entrusted the matter to Guntur advocate, who has died and as such, there was a communication gap between the respondent and his counsel, however, decree and judgment was passed by the Court on 07.12.2006.

8. Accordingly, the Court below opined that there is no willful default or negligence on the part of the respondent for not appearing in the Court. The length of period is not the relevant, justification for explanation is relevant for considering the condonation of the delay. The parties to the *lis* cannot be deprived of their legitimate right of adjudication because of the laches on the part of the counsel.

9. The respondent has given certain reason for his absence during that time. In his chief affidavit, he stated that he had engaged Ala Hanumantha Reddy, advocate, Narasaraopet in the suit, who entrusted the case to B.Radha Krishna Murthy, Advocate, Guntur. The said Radha Krishna Murthy is no more, who filed vakalath in the suit and appearing on his behalf. The said advocate used to inform the respondent the date of adjournments and whenever he asked the respondent to attend the Court, the respondent used to act accordingly. As the petitioner's counsel assured him that he would inform the date of adjournment, however, he did not contact him to ascertain the subsequent date of adjournment. So, the respondent was under the impression that the case is going on in the court.

10. It is pertinent to mention here that the counsel for respondent stopped appearing in the court after filing written statement, therefore, the respondent was proceeded ex parte vide order dated 07.12.2006.

11. Had the said decree executed, the petitioner would have benefited of the same way back in the year 2006 and would have get decretal amount. Due to the delay caused by the respondent, till date, the petitioner could not get any amount and has to join the proceedings again till passing of the final decree.

12. It is pertinent to mention here that Court below directed the respondent to deposit the entire suit amount and to pay costs of Rs.10,000/- to be paid in favour of petitioner. As stated by the counsel for the respondent, the suit amount and the cost amount have already been deposited in the court below.

13. In view of the facts noted above, normally as a practice when a case is assigned to the advocate, he shall take the responsibility of the case. It is the duty of the advocate to attend the case on each and every date of hearing, and if the presence of the party is required, he is duty bound to inform the same to the party.

14. In the case in hand, the respondent engaged counsel at Narasaraopet, who entrusted the matter to Sri Radha Krishna Murthy, Advocate at Guntur, who is no more. Though, it is not clear when advocate Murthy expired. However, whatever was in the hands of respondent, he has taken all the steps i.e., filed written statement and engaged a counsel. If the counsel failed to appear in the Court and failed to communicate any information to the litigant, the litigant cannot be allowed to suffer for laches and lapses on the part of the advocate. Simultaneously, the other litigant party can also not be allowed to suffer.

15. Though the Court below directed the respondent to deposit entire amount and pay costs of Rs.10,000/- to the

petitioner, which has already been deposited, I deem it appropriate to dismiss the present petition with costs of Rs.15,000/- (Rupees fifteen thousand only) in addition to costs already imposed by the Court below to be paid by the respondent in favour of the petitioner, within three (03) weeks from today.

16. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

17. Miscellaneous petitions, if any, pending shall stand closed.



JUSTICE SURESH KUMAR KAIT.

Date :10-02-2017

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