THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.3350 of 2017

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the unsuccessful 1st defendant company assailing the order, dated 03.07.2017, of the learned XVII Additional Senior Civil Judge, City Civil Court, Hyderabad, passed in I.A.No.796 of 2016 in O.S.No.1537 of 2013.

2. I have heard the submissions of *Sri Deepak Bhattacharjee*, learned senior counsel, appearing for Sri Dishit Bhattacharjee, learned counsel appearing for the petitioner/1st defendant, and of *Sri Sai Gangadhar Chamarthy,* learned counsel appearing for Sri Y.Subba Rao, learned counsel for the 1st respondent/plaintiff. I have perused the material record.

3. The introductory facts, in brief, are as follows:

The 1st respondent/Plaintiff (hereinafter, 'plaintiff') filed the suit against the revision petitioner/1st defendant and another, who is the Marketing Manager of the 1st defendant company for recovery of money in a sum of Rs.3,66,672/- together with interest from the date of the suit till the date of realization and for costs. The suit was decreed *ex parte*, on 29.09.2015. Both the defendants filed an application to set aside the *ex parte* decree passed in the suit. As a delay of 274 days had occasioned in filing the said petition, the defendants filed the afore-said interlocutory application under Section 5 of the Limitation Act, 1963, requesting to condone the said delay. The plaintiff filed a counter resisting the said application. On merits and by the orders impugned in this revision, the trial Court dismissed the petition of the defendants 1 and 2 and refused to condone the delay. Aggrieved thereof, the 1st defendant company alone preferred this revision.

4. Before proceeding further, it is necessary to refer to the pleadings of the parties.

4.1 The case of the 1st defendant company in support of the request for condonation of delay, in brief, is this: 'The suit was decreed *ex parte*. In the second week of June, 2016, the deponent who is the person authorised to represent the 1st defendant company came to know about the pleadings of the plaintiff after collecting the information with regard to *ex parte* decree passed in the suit and when the Decree-Holder is proclaiming to execute the decree against the company for realization of the decree debt. One T.Vijay Shekar was the Sales Executive of the 1st defendant company's branch at Hyderabad. He is neither the Area Manager nor the Branch Manager of the Branch of the 1st defendant company. The plaintiff was the then Regional Manager of the 1st defendant company. The said Vijay Shekar was then working under the plaintiff. The plaintiff colluded with the said Vijay Shekar; and the *ex parte* decree was obtained by manipulations of by both of them. Though an authorization was given to Vijay Shekar to look after the litigation in respect of the gratuity of the plaintiff from the Branch at Hyderabad, the said Vijay Shekar misused his power and did not inform the 1st defendant company about the particulars of the suit and the receipt of suit summons to enable the 1st defendant company to take timely steps in the suit. The counsel engaged by him is not approved by the 1st defendant company. Thus, the *ex parte* decree was obtained in a *mala fide* manner by managing the service of the suit summons on the said Vijaya Shekar. The plaintiff after his alleged resignation has ceased to act as the Area Manager of the 1st defendant company and he is not entitled to give the address of the sales office in the plaint. Further, the office of the sales office was shifted to some other address. Therefore, the address of the 1st defendant company is wrongly noted in the plaint and also in the summons sent through Court. The 1st defendant's administrative office and Head Office are at Pipaliya, Kalan, Pale District, Rajasthan State. Its registered office is at Ahmedabad. The Managing Director of the 1st defendant company carries on business from his administrative office. Though the Head Office address of the 1st defendant company was mentioned, summons were addressed to the registered office with a *mala fide* intention to block the information of the suit reaching the 1st defendant company. In the circumstances explained, the 1st defendant company has no notice or knowledge of the suit. There is no merit in the claim made in the suit by the plaintiff against the 1st defendant company. The plaintiff is not entitled to the suit claim. The 1st defendant is having fair chance of success in the suit. Hence, the petition to set aside the *ex parte* decree is filed. However, as delay had occasioned in filing the said application, the present petition is filed for condonation of the said delay.'

5. The case of the plaintiff, in brief, is this:

'The material allegations in the affidavit filed in support of the petition are false. The same are specifically denied. The deponent of the affidavit is not the authorised person. He cannot represent the 1st defendant company. The allegations in the affidavit including the allegation that the 1st defendant company has no knowledge of the notice sent in the suit and the suit are all false. The 1st defendant company had knowledge of the suit notice and also of the suit. In fact, the representative of the 1st defendant company, who was the then employee of the 1st defendant company, filed vakalat in the name of the

1st defendant company. The said fact is evident from the material record. It is not the contention of the 1st defendant company that the said Vijay Shekar is not on its rolls at the relevant time. He is still working as an employee in the 1st defendant company. The allegations that the suit claim has no merit and the 1st defendant company has fair chances of success in the suit are all false and invented. The long delay of 274 days cannot be condoned in the absence of any explanation. Hence, the petition may be dismissed.'

6. I have given earnest consideration to the facts and the submissions made in line with the pleadings of the respective parties.

7. Before proceeding further, it is apt to note the following settled propositions on the settled legal aspects regarding condonation of delay:

> 'The statutory provision mandates that while considering the applications for condonation of delay, the applicants are required to show sufficient cause for condonation of such delay. Condonation of delay is a matter of discretion of the Court. The words 'sufficient cause' under Section 5 of the Limitation Act should receive liberal construction so as to achieve substantial justice. However while condoning the delay; the Court should not forget the opposite party altogether. A liberal approach is to be adopted in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the limitation Act. The concept of such a liberal approach cannot be equated with doing injustice to the other party. The court cannot condone the delay in a case where the Court concludes that there is no justification for the delay. The discretion has to be exercised within the reasonable bounds known to the law. Whims or fancies, prejudices or predilections could not form the basis for exercising the discretionary power. When the delay is directly a result of negligence or default or inaction of a party, such delay cannot be condoned on mere asking of that party. When an applicant makes an incorrect statement in an application seeking condonation of delay, the Court ought to refuse to condone such delay or inordinate delay. When the

> explanation offered is a sufficient cause for condonation of delay, but the delay that deserves to be condoned is a long delay, such delay is generally condoned by imposition of adequate costs as compensation to offset the delay in hearing and disposal of the case. Length of delay is no matter and the acceptability of the explanation is the only criterion. If there is no acceptable explanation, sometimes a delay of shorter length may also be uncondonable whereas in certain other times, the delay of a very long range can be condoned provided sufficient cause is shown.' The expression 'sufficient cause' is a cause for which the defendant could not be blamed. [Vide the decision of the Supreme Court in Parimal v. Veena[1]]. In this decision, it was also held as follows: 'However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion it has to be exercised judiciously.'

It is also to be noted that in the decision in Srei International Finance Limited v. Fairgrowth Financial services Limited and Another[2] relied upon by the learned counsel for the petitioner/1st defendant, the Supreme Court held that it is well settled that, ordinarily, a litigant should not be denied a hearing on merits unless something akin to gross negligence or misconduct on his part in contesting the proceedings is made out. In this reported case, the facts show that the appellant is a company having its corporate office at Kolkata and that it instructed its solicitors at Kolkata and that they in turn, instructed the solicitors in Bombay to appear and plead for the plaintiff and that initially there was an appearance by the Bombay solicitors but, later on, there was a default in appearance and that some time before the matters were taken up for hearing by the Special Court, one of the members of the Firm of the solicitors for the appellant at Kolkata, who was looking after appellant's cases, had suffered serious accident and remained

1 AIR 2011 SUPREME COURT 1150
2 (2005) 13 Supreme Court Cases 95

immobilized for a period of about nine months and that in such circumstances, the Supreme Court was of the view that a lenient view ought to have been taken by the Special Court and the *ex parte* decree should have been set aside. Eventually, the Supreme Court has set aside the *ex parte* decree subject to certain conditions.

8. Be that as it may. Reverting to the facts of the case, it is to be noted that the plaintiff who is formerly an employee of the 1st defendant company filed the suit against the 1st defendant company and its Regional Manager for recovery of more than Rs.3,50,000/- with interest thereon. According to the submissions, the suit claim relates to the incentives towards the sale of Aluminium Foils at the State of Andhra Pradesh. Be that as it may. The suit summonses are admittedly served on one Vijay Sekhar who is the Sales Executive/employee of the 1st defendant company's Branch at Hyderabad. According to the 1st defendant company, he is neither the Branch Manager nor the Area Manager. The plaintiff was the Regional Manager till he resigned from the said position in the 1st defendant company. It appears that on service of summons in the suit on the said Vijay Shekar, he engaged a counsel, by name, P.Prashant Kumar, and the said counsel filed vakalat on behalf of the 1st defendant company; and, according to the observations in the impugned order, the same was signed by an authorised signatory and also bears the rubber stamp of the company. The trial Court, in its orders observed as follows: 'There is no material adduced by the petitioners/defendants except making a self serving statement in the affidavit filed in support of this petition that one Vijay Shekar who signed the vakalat on behalf of the petitioners/defendants in the said suit, has no specific authority to do so.' From this observation, it appears that the vakalat is signed by Vijay Shekar who received

summons and who is said to be the Sales Executive of the 1st defendant company's branch at Hyderabad. He is, therefore, not a principal officer of the 1st defendant company.

9. Rule 2 of Order XXIX of the Code, which deals with service on Corporation, postulates that, subject to any statutory provision relating to service of process, where the suit is against a Corporation, the summons may be served---

(a) on the secretary or on any director, or the principal officer of the corporation; or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

From the material record placed before this Court, summons were not served on Secretary or any Director or the principal officer of the Corporation, as Vijay Shekar on whom summons are admittedly served, is only a Sales Executive at the Hyderabad branch of the 1st defendant company. The summonses were not served on any officer either at the registered office or at a place, where the 1st defendant company is carrying on its business. However, it is borne out by the record that on service of summons on the said Vijay Shekar, who is said to be a sales executive, the vakalat signed by him with the seal or the rubber stamp of the company was filed into Court, through an advocate who was engaged by him to defend the 1st defendant company. Later, the 1st defendant company was set *ex parte* and an *ex parte* decree has come to be passed. The said aspects are also discernable from the counter of the plaintiff and the order impugned in this revision. Admittedly, the *ex parte* decree was passed on 29.09.2015. However, the daily status report from the website of the Court, which is downloaded and filed before this Court, discloses that on 02.09.2015, the Court below recorded verbatim as follows in the proceeding sheet: *'Defendant no.1 called absent. No representation. Registered post summons returned served. Hence, the 1st defendant ex parte. For plaintiff's evidence, posted to 10.09.2015'.* Whereas, as already noted the record also discloses that the 1st defendant was not set *ex parte* on mere non-appearance after the summons are returned served, but was set *ex parte* after the 1st defendant company entered appearance through an Advocate engaged by Vijay Sekhar and on his filing vakalat signed for the 1st defendant company.

10. On the above analysis and on consideration of the totality of the facts and circumstances of the case, this Court finds that there is no proper/valid service of summons on the 1st defendant company and that, therefore, its explanation for condonation of the delay can be considered as a sufficient cause. Accordingly, this Court holds that the request of the 1st defendant company merits consideration and that it is a fit case to afford it an opportunity to contest the suit on merits. However, to offset the hardship that may be caused to the plaintiff on account of the delay in disposal of the suit, this Court is of the considered view that the petition for condonation of delay can be allowed after imposing conditions.

11. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, I.A.No.796 of 2016 in O.S.No.1537 of 2013 is allowed, subject to the condition that the 1st defendant shall deposit to the credit of the suit O.S.No.1537 of 2013, costs of Rs.25,000/- (Rupees Twenty five thousands only) within three weeks from the date of receipt of a copy of this order. On such deposit, the

trial Court shall pass a formal order allowing the petition to set aside, the *ex parte* decree, as it ought to be allowed on the same analogy. The plaintiff is at liberty to withdraw the said costs by following the procedure established by law. It is needless to state that the trial Court after passing such a formal order in the said application shall direct the 1st defendant company to file its written statement within a week thereafter and then take up the suit for disposal in strict accordance with the procedure established by law. It is made clear that on failure of the 1st defendant company in depositing the costs imposed within the time stipulated supra, the subject interlocutory application shall stand dismissed and the order impugned in this revision shall stand revived.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

17th November, 2017

Note:- Issue CC by 29.11.2017
(B/o)
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