

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.128 OF 2012

ORDER:

Heard.

2. Perused the grounds of revision and the impugned order of the lower court.

3. In the maintenance suit filed by the wife with children against the revision petitioner/husband, in O.P.No.427 of 2010 on the file of the Judge, Family Court, Vijayawada, there was an *ex parte* decree dated 30.09.2010 and he is in USA and his GPA holder is one Anil Kumar and represent through GPA holder, he filed an application for setting aside the *ex parte* decree with delay condonation of 73 days. The observation of the lower court in the dismissal of the application is that it is only the GPA holder that filed the affidavit and not the sole respondent to the O.P.No.427 of 2010 and GPA holder has not stated of the reasons are within his knowledge but for saying no regular notice served on the O.P. respondent and no other reason explained for the delay, thereby, there is no sufficient cause.

4. In fact, when the very case is of notice not served, where is the question of further explanation but for to consider notice served or not. Even the counter filed by the O.P.No.427 of 2010, petitioners as respondents to the I.A.No.1503 of 2010 delay condonation application, it is

stated that if at all he was in India, he failed to appear and no reason assigned for non-appearance in person and appointing GPA. It is thereby the very dismissal order of the lower court is unsustainable. Once, it is categorically stated of notice not served and not even the counter contention of notice served, leave about no observation of the trial court from perusal of record of notice served personally or there is any paper publication circulation in the place of his residence in USA.

5. Having regard to the above, this civil revision petition is allowed, setting aside the dismissal order of the lower court by condoning the delay of 73 days, subject to costs of Rs.1,000/- to the respondents payable before lower court within one week from date of receipt of the order, therefrom for the lower court to entertain the *ex parte* decree set aside petition and subject to ordering deposit of atleast 50% of the arrears of maintenance covered by the *ex parte* decree within a period of four weeks therefrom to withdraw without furnishing security and to pass interim maintenance pending disposal of the suit for such amount or such other reasonable amount after hearing by virtue of this order.

6. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

DR.B.SIVA SANKARA RAO, J

21.11.2017
SS