

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 1428 OF 2017

ORDER :

This Revision is directed against the Order dated 30.01.2017, whereby I.A. No. 371 of 2016, filed under Section 5 of the Indian Limitation Act to condone the delay of 149 days in filing the Petition to set aside the *ex parte* decree, was allowed, on depositing 50% of the decretal amount due as on that day or before 24.02.2017.

O.S. No. 359 of 2014 was filed on the file of the Principal Senior Civil Judge's Court at Nellore seeking a direction to the defendants therein to pay a sum of Rs.4,13,320/- with subsequent interest at 24% per annum from the date of suit till the date of realization to the extent of the estate devolved upon Defendants 2 and 3. The said suit was decreed *ex parte* on 30.09.2015.

Heard learned counsel for the petitioners as well as learned counsel for the respondent.

It has been fairly conceded that the Apex Court as well as this Court has repeatedly held that except in exceptional circumstances of gross negligence, imposition of a condition to deposit the suit claim amount for the purpose of setting aside an *ex parte* decree cannot be resorted to.

In the present case, the delay in filing the petition to set aside the *ex parte* decree is 149 days. The fact that the Court below found it justifiable to set aside the *ex parte* decree does indicate that the reasons stated by the petitioner for the delay that has

occasioned, had been accepted. However, it imposed the onerous condition to deposit 50 % of the decretal amount.

Be that as it may, in view of the dicta laid down by the Apex Court as well as this Court, the Order dated 30.01.2017 to the extent of imposing the condition to deposit 50% of the decretal amount, is set aside. However, considering the fact that there was delay in filing the Petition, the respondent / plaintiff is directed to be compensated by paying costs of Rs.5,000/- (Rupees five thousand only).

The Civil Revision Petition is therefore, disposed of with the above-said modification. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

02nd June 2017

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