

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition Nos.4391 and 4498 of 2017

Common Order:

Aggrieved by the order of the Trial Court refusing to condone the delay and as a consequence dismissing the application for restoration of an interlocutory application, the 3rd defendant in a suit has come up with the above civil revision petitions.

2. Heard Mr. Rambabu Koppineedi, learned counsel for the petitioner and Mr. Sattiraju Swamy, learned counsel appearing for the 1st respondent/plaintiff.

3. The 1st respondent/plaintiff filed a suit in O.S. No.1334 of 2012 on the file of the Senior Civil Judge, Vijayawada, seeking specific performance of an agreement of sale and also for a declaration that a sale deed standing in the name of the 3rd defendant was not binding on him. The 3rd defendant was set *ex parte* in the suit. Thereafter, calamities fell upon him one after another with contributions sufficiently made by the lawyers engaged by him. The 3rd defendant first filed I.A.No.540 of 2015 for setting aside the *ex parte* order. That was dismissed for non-prosecution on 14-10-2015.

4. The 3rd defendant filed I.A.No.888 of 2015 for restoration of I.A.No.540 of 2015. That was dismissed for non-prosecution on 26-8-2016. Thereafter, he filed I.A.No.169

of 2016 for restoration of I.A.No.888 of 2015 but the same was also dismissed for non-prosecution on 15-12-2016.

5. Thereafter, the 3rd defendant filed two applications in I.A.Nos.513 and 514 of 2017, for condonation of the delay and for restoration of I.A.No.169 of 2016. These two applications alone were allowed by the 3rd defendant's counsel to be decided on merits and they were accordingly dismissed by the Court below forcing the 3rd defendant to come up with the above revisions.

6. I cannot really find fault with the Trial Court in dismissing these applications, since the defaults committed by the 3rd defendant/petitioner are one too many. No Court can tolerate the kind of defaults that the petitioner and his counsel have committed in this case.

7. But unfortunately for the petitioner, there is still a ray of hope. The suit has not yet been finally disposed of. The dismissal of an application to set aside the *ex parte* order is different and distinct from a petition to set aside an *ex parte* decree. The dismissal of an application to set aside the *ex parte* order, for the default of the petitioner, may not operate as *res judicata*. Therefore, instead of filing repeated applications for restoration of the application to set aside the *ex parte* order, the petitioner could have filed a fresh application for setting aside the *ex parte* order. Therefore, the revisions are dismissed. However, it will be open to the petitioner to move an application for setting aside the *ex parte*

order, if the suit has not yet been disposed of.
The miscellaneous petitions, if any, pending in these revisions
shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

15th December, 2017.
Ak



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition Nos.4391 and 4498 of 2017
(Common Order)



15th December, 2017.
(Ak)