

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.4056 OF 2012

ORDER:

This Civil Revision Petition is filed under Section 115 of C.P.C. challenging the order dated 26.07.2012 in C.F.R.No.1793 of 2012 in O.S.No.533 of 2000 on the file of the Principal Junior Civil Judge, Dhane, wherein and whereby the petition filed by the petitioner under Section 5 of the Limitation Act was rejected.

2. Heard the learned counsel for both parties.

3. The facts leading to filing of the present revision are briefly as follows:

The respondent herein filed O.S.No.533 of 2000 on the file of the Principal Junior Civil Judge, Dhane, against the petitioner herein for recovery of an amount of Rs.45,000/- basing on the promissory note dated 01.06.1994. The trial Court passed an *ex-parte* decree on 16.03.2001. The respondent filed E.P.No.346 of 2011 in O.S.No.533 of 2000 on the file of the Principal Junior Civil Judge, Dhane. The Executing Court issued a notice to the petitioner under Order XXI Rule 22 of C.P.C. After receipt of the said notice, the petitioner filed C.F.R.No.1793 of 2012 in O.S.No.533 of 2000 to condone the delay of 3,933 days in preferring the petition to set aside the *ex-parte* decree passed on 16.03.2001. The trial Court, after affording a reasonable opportunity to both parties, rejected the petition. Hence, the revision.

4. Sri Mahadeva Kanthrigala, the learned counsel for the petitioner, vehemently submitted that the trial Court allowed the suit without notice to the petitioner. He further submitted that the order passed by the trial Court is not sustainable either on facts or in law.

5. *Per contra*, Sri K.V.N.Bhopal, the learned counsel for the respondent, submitted that the petitioner having received the notice in O.S.No.533 of 2000, remained *ex-parte*. He further submitted that the petitioner filed the petition under Section 5 of the Limitation Act by suppressing the material facts. He also submitted that there is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court.

6. Now the point for consideration is “Whether the trial Court is justified in rejecting the petition or not”?

7. Learned counsel for the respondent strenuously submitted that the petitioner has received the notice in O.S.No533 of 2000 and did not choose to appear and contest the main suit.

8. It is the contention of the petitioner that the respondent forged his signature on suit summons so as to enable the trial court to pass *ex parte* decree.

9. It is not in dispute that the petitioner herein belongs to Chinna Malkapuram Village of Dhone Mandal. A perusal of the record reveals that the suit summons were sent to the petitioner’s native place i.e., Chinna Malkapuram Village of Dhone Mandal. In spite of service of summons, the petitioner did not choose to appear before the trial Court. The trial Court, after following due

procedure, decreed the suit, on 16.03.2001, in favour of the respondent against the petitioner.

10. It is the case of the petitioner that after receipt of summons in E.P.No.346 of 2011 in O.S.No.533 of 2000, he came to know about passing of the *ex-parte* decree. It is also the case of the petitioner that at the relevant point of time, he was residing in Chennai; therefore, the respondent ought to have taken summons to his address in Chennai.

11. Except the averments made in the affidavit, nothing is placed before the trial Court to establish that at the relevant point of time the petitioner was residing in Chennai. If really the respondent has managed the postman and forged the signature of the petitioner, what prevented him to come into the witness box to substantiate his stand? For the reasons best known, the petitioner did not choose to produce the summon copy in O.S.No.533 of 2000. The possibility of taking this type of plea by the parties to the proceedings, in order to overcome the adverse situation, cannot be ruled out completely. The trial Court as a matter of precaution directed the respondent herein to serve the notice on the petitioner by way of substitute service. As directed by the trial court, the respondent has given a paper publication in Ujwala Newspaper having circulation in and around Done. In spite of paper publication, the petitioner did not choose to appear and contest the main suit. The material placed before the Court *prima facie* reveals that the petitioner intentionally and willfully did not appear before the trial Court having received the summons and also on knowing about the paper publication. Therefore, I am unable to

accede to the contention of the learned counsel for the petitioner that the trial Court has not followed the procedure as contemplated under Civil Procedure Code while serving notice on the petitioner.

12. The petitioner filed the petition to condone the delay of 3,933 days in filing the petition to set aside the *ex-parte* decree i.e., more than ten years after passing of the decree. On 23.02.2017 the learned counsel for the petitioner submitted that the petitioner is willing to deposit the entire decretal amount and requested six weeks time. Basing on the submission of the learned counsel for the petitioner, this Court posted the matter to 23.03.2017. Again the petitioner requested time upto 30.03.2017 for depositing the entire decretal amount. For the reasons best known, the petitioner did not choose to deposit the decretal amount as assured by him. This Court is very much conscious that merely because the petitioner did not deposit the amount that itself is not a valid ground to dismiss the revision petition without considering other aspects. As observed earlier, the petitioner intentionally and willfully did not appear before the trial Court having received the summons. When the respondent filed the E.P., the petitioner filed the present petition. I have carefully scanned the affidavit filed by the petitioner before the trial Court. It is needless to say that the duty is cast on the petitioner to explain the reasons for each day's delay. There is no averment in the affidavit explaining the reasons, much less cogent and valid reasons, for the delay in filing the petition. If the Court allows this type of petitions, the litigant public may feel that they can protract the matters as long as possible by filing petitions one after another, without assigning the

reasons much less cogent and valid reasons. The petitioner has not taken a little bit of care while filing the affidavit before the trial Court. It appears the petitioner is under a misconception that the Court may automatically condone the delay. The petitioner has not assigned reasons much less cogent and valid reasons for delay in filing the petition. The affidavit filed in support of the petition does not disclose any cause much less sufficient cause to condone the delay. It appears that the main purpose of filing of the petition is to prevent the respondent to enjoy the fruits of the decree, which was passed on 16.03.2001.

13. Having regard to the facts and circumstances of the case, I am of the considered view that the revision lacks merits and *bona fides*.

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

15. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 06.04.2017
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