

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.523 OF 2015

ORDER:

This revision is filed under Article 227 of the Constitution of India challenging the order dated 02.07.2014 passed in I.A.No.26 of 2011 in O.S.No.317 of 2002 by the IV Additional Junior Civil Judge, Rajahmundry, whereby delay of 3,459 days was condoned subject to payment of Rs.5,000/- to the respondent therein.

The respondent herein was the petitioner and the petitioner herein was the respondent before the trial Court. For convenience sake, the parties hereinafter will be referred to as they are arrayed in I.A.No.26 of 2011 in O.S.No.317 of 2002 before the trial Court.

The petitioner filed a petition under Section 5 of Limitation Act along with the application to condone the delay on the ground that no summons were served in the suit on him and only on receipt of notice in E.P.No.83 of 2011 in O.S.No.317 of 2002 in the month of October, 2002, he came to know about passing of decree by the Court.

The respondent denied the alleged non-service of summons and contended that unless there is specific reason for such condonation of abnormal delay, the same cannot be condoned.

The trial Court, after perusing the material on record and hearing both the counsel, found that summons were returned with endorsement of refusal, by the Process Server, who also obtained third party signature but failed to note down the address particulars of third party. Finally, the trial Court concluded that there is no specific evidence as to service of summons and with a view to afford reasonable opportunity to the petitioner condoned the delay.

The present revision is filed on the sole ground that the order of the trial Court is bereft of reasons much less valid reasons to condone the abnormal delay of 3,459 days, thereby the order cannot be sustained under law.

The main reason for condonation of delay was that no summons were served on the petitioner, in the main suit, but he came to know about passing of decree only on receipt of notice in E.P.No.83 of 2011 in O.S.No.317 of 2002, but the trial Court verified the record and found that the summons were returned with endorsement of refusal by the petitioner and the Process Server concerned obtained the signature of third party, who is a witness for refusal of notice.

Section 5 of the Limitation Act deals with extension of prescribed period in certain cases, which reads thus:

***“5.Extension of prescribed period in certain cases:
Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.”***

Here the cause shown by the petitioner is that no notice was served on him in the suit and he came to know about passing of decree only on receipt of notice in E.P.No.83 of 2011 in O.S.No.317 of 2002.

Rule 79 of A.P.Civil Rules of Practice deals with verification of return, which reads thus:

“79. Verification of return:

(1) The return of service shall be verified by an affidavit of the Serving Officer. All Nazirs and Deputy Nazirs are

authorised to administer the oath to and to take the affirmation of any process-server.

(2) If the process-server is not personally acquainted with the person to be served, the return shall be supported by a verification at the foot thereof made and signed either by a Village Officer or by a respectable person who identifies him; and in the latter case, the full name and address of such person shall be set out in the verification.”

As per sub-rule (2) of Rule 79 of A.P.Civil Rules of Practice, when the process-server is not personally acquainted with the person to be served, the return shall be supported by a verification at the foot thereof made and signed either by a Village Officer or by a respectable person, who identifies him and the full name and address of such person shall be set out in the verification. The Process Server obtained the signature of third party as he has no acquaintance with the person to be served.

In the present case, at the foot of the return, there is no verification signed by a Village Officer or respectable person, identified the person, who allegedly refused to receive the summons. The other requirement specified in sub-rule (2) of Rule 79 of A.P.Civil Rules of Practice, the full name and address of such person shall be set out in the verification, but the same is not mentioned in the return endorsement. Hence, on account of this lacuna, the trial Court allowed the application disbelieving the return endorsement of refusal of summons by the petitioner. Therefore, the order passed by the trial Court does not suffer from any illegality and it is in consonance with Rule 79 of A.P.Civil Rules of Practice.

Hence, I find no illegality or irregularity in the order passed by the Trial Court warranting interference by this Court by exercising jurisdiction under Article 227 of Constitution of India, as the power under Article 227 of Constitution of India is supervisory in nature. Therefore, the revision is liable to be dismissed. However, time is extended for '10' days for payment of costs and the Trial Court is directed to decide the matter as expeditiously as possible, preferably within a period of six (6) months from the date of receipt of a copy of this Order.

With the above direction, the revision is disposed of. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

17.04.2017
Ksp

JUSTICE M. SATYANARAYANA MURTHY

