

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No.5584 OF 2017

ORDER:

Plaintiff in O.S.No.17 of 2009 on the file of the Court of the I Additional District Judge, Kurnool is the petitioner in the present revision filed under Section 115 of the Code of Civil Procedure, 1908. This revision challenges the order, dated 14.09.2017, passed by the said Court in I.A.No.390 of 2012 in O.S.No.17 of 2009.

2. Heard Sri G.Sravan Kumar, learned counsel for the plaintiff/petitioner herein, and Sri Vedula Srinivas, learned counsel for the defendant/respondent herein, apart from perusing the material available before this Court.

3. The petitioner herein instituted the above said suit for a declaration that the registered sale deed executed by him in favour of the respondent on 05.11.2007 is null and void on the ground of absence of consideration. The learned I Additional District Judge, Kurnool, on 30.12.2010, decreed the suit *ex parte*. The defendant/respondent filed an application under the provisions of Order IX Rule 13 C.P.C., praying the Court below to set aside the *ex parte* decree. Along with the same, he also filed I.A.No.390 of 2012 under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 359 days in filing the application under Order IX Rule 13 C.P.C. The plaintiff/petitioner herein contested the said application by way of filing a counter. The learned District Judge, by way of an order, dated 14.09.2017, allowed I.A.No.390 of 2012, condoning the delay in filing the application under Order IX Rule 13 C.P.C. Hence, the present revision.

4. According to the learned counsel for the petitioner, the order impugned is highly erroneous, contrary to law and opposed to the object of the provisions of Section 5 of the Limitation Act. It is the further submission of the learned counsel that had the contents of the counter filed before the Court below been considered in proper perspective, the order impugned would not have emanated. It is further contended that the learned District Judge grossly erred in allowing the application without taking into consideration the subsequent developments after passing of the decree.

5. *Per contra*, it is contended by the learned counsel for the defendant/respondent that there is no error nor there exists any infirmity in the impugned order and in the absence of the same, the order impugned is not amenable for any correction by this Court in exercise of the powers conferred under Section 115 C.P.C. It is also the submission of the learned counsel that the defendant did not receive the summons in the suit and in the paper publication also, the name of the defendant was wrongly mentioned as “M.N. Lokeswara Reddy” instead of “M.V. Lokeswara Reddy”. It is further contended that the learned District Judge also allowed I.A.No.310 of 2017 filed under Order IX Rule 13 C.P.C. and the said order, setting aside the *ex parte* decree, is not assailed by the plaintiff.

6. In the instant case, as mentioned *supra*, the learned I Additional District Judge, Kurnool decreed the suit *ex parte* on 30.12.2010. Admittedly, the present application, seeking condonation of delay, and the application to set aside the *ex parte* decree were filed in the month of January, 2012. The reason

mentioned in the affidavit filed in support of the application for condonation of delay is the non-service of suit summons on the defendant. A perusal of the order under challenge discloses, in clear and vivid terms, that the learned District Judge meticulously and elaborately considered all the aspects including the non-service of summons and the involvement of substantial rights of the parties and allowed the application. It is also significant to note that in the paper publication taken in Janatha Telugu Daily, the name of the defendant/respondent herein was also wrongly mentioned as “M.N. Lokeswara Reddy” instead of “M.V. Lokeswara Reddy”, as submitted by the learned counsel for the respondent/defendant. The suit schedule property is a valuable agricultural land, admeasuring Ac.1.13 cents in Sy.No.632/A of Kurnool Town. The said extent and the consideration indicated would also demonstrate the involvement of valuable rights of the parties.

7. Another important aspect, which has bearing on the present revision, is that the I Additional District Judge, Kurnool allowed I.A.No.310 of 2017 filed by the defendant/respondent herein under the provisions of Order IX Rule 13 C.P.C. By virtue of the said order, the learned Judge did set aside the *ex parte* decree. According to the learned counsel for the respondent, after the said order, the defendant filed a written statement and the trial has commenced in the matter. In this context, it is appropriate to refer to the judgment of the Hon’ble Apex Court in **N.Balakrishnan Vs.**

M.Krishnamurthy¹, wherein the Hon'ble Supreme Court, at para Nos.13 and 14, held as under:

“13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put-forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when Courts condone the delay due to laches on the part of the applicant the Court shall compensate the opposite party for his loss.

14. In this case explanation for the delay set up by the appellant was found satisfactory to the trial Court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising revisional jurisdiction. Nonetheless, the respondent must be compensated particularly because the appellant has secured a sum of Rs.Fifty thousand from the delinquent advocate through the Consumer Disputes Redressal Forum. We, therefore, allow these appeals and set aside the impugned order by restoring the order passed by the trial Court but on a condition that appellant shall pay a sum of Rupees Ten thousand to the respondent (or deposit it in this Court) within one month from this date.”

8. In view of the reasons mentioned in the preceding paragraphs and the principles laid down in the above referred

¹ A.I.R. 1998 SUPREME COURT 3222

judgment, this Court does not find any valid reason to meddle with the well articulated order passed by the learned District Judge.

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

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

JUSTICE A.V.SESHA SAI

Date : 13.12.2017
AMD



THE HONOURABLE SRI JUSTICE A.V.SESHA SAI



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AMD