

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.6529 OF 2017

ORDER:

This revision petition is filed under Section 115 of the Code of Civil Procedure challenging the order dated 24.10.2017 in I.A.No.213 of 2017 in O.S.N.193 of 2013 passed by the Sub-Divisional Magistrate and Special Assistant Agent to Government, Mobile Court, Bhadrachalam, dismissing the application filed under Section 5 of the Limitation Act to condone the delay of 897 days in filing petition to set aside the exparte decree and judgment dated 25.02.2015 on the ground that there are no grounds to allow the petition.

The petitioner is the defendant. The respondent/plaintiff obtained exparte decree in the above suit without serving any notice on the petitioner. On receipt of execution petition, the petitioner/defendant came to know about the alleged passing of exparte decree and asserted that no notice was served on him in the suit. Therefore, there is justifiable cause to set aside the exparte decree passed against him.

The respondent also filed counter denying material allegations raising specific contention that notice was served on the petitioner and that the petitioner did not explain the delay properly in filing the petition to set aside the exparte order, , prayed to dismiss the petition.

The relevant portion of the impugned order reads as under:

"After perusing both the petitions and counter averments and the documentary evidence available, a common orders is passing that there are no merits to allow the above petition.

In the result, the set aside petitions are dismissed. No costs.

The Sub-divisional Magistrate passed the cryptic order without discussing any of the grounds raised by the respondent to condone the

delay of 897 days in filing the petition and another petition to set aside the exparte order. Passing of such cryptic order is impermissible under law and the Magistrate is expected to consider the grounds urged by both the parties before him and pass reasoned order so as to enable the parties to know the reason for dismissal or allowing such application. But the order passed by the Magistrate is bereft of any reasons. Therefore, the order passed by the Magistrate is unsustainable under law and the same is liable to be set aside.

Accordingly, the revision petition is allowed setting aside the order dated 24.10.2017 while remanding the matter to the Sub-divisional Magistrate and Special Assistant Agent to Government, Mobile Court, Bhadrachalam with a direction to dispose of the petitions in accordance with law assigning specific reasons for any conclusion, on any aspect either for allowing or dismissing, so as to enable the parties to know the reason for passing such order, within one month from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

15.12.2017
Kvrm