

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.1048 of 2018

ORDER:

This revision arises out of an order of the First Appellate Court, dismissing an appeal arising out of dismissal of an application for condonation of delay in setting aside the *ex parte* decree.

2. Heard Mr. M.K. Raj Kumar, learned counsel for the revision petitioner and Mr. Rambabu Koppineedi, learned counsel for the respondent.

3. The respondent filed a suit in O.S.No.339 of 2015 for eviction as well as for recovery of arrears of rent. The suit was decreed on 02-03-2017. Though the defendant was actually set *ex parte*, the judgment appears to be one passed under Order XVII Rule 2 of the Code of Civil Procedure, 1908.

4. However, the defendant filed an application to condone the delay of 67 days in seeking to set aside the *ex parte* decree. But this application was not in addition to any application for setting aside the *ex parte* decree. Since there was no separate application for setting aside the *ex parte* decree, the trial Court dismissed the condone delay application.

5. Instead of filing a Civil Revision Petition, the petitioner filed a Civil Miscellaneous Appeal before the First Appellate Court, as against the order refusing to condone the delay. This appeal was dismissed by the First Appellate Court on the ground of maintainability. It is against the said order that the petitioner is before this Court.

6. The above revision is completely devoid of merits. As against an order dismissing an application under Section 5 of the Limitation Act, 1963, only a revision will lie. An appeal will not lie. But the petitioner chose the wrong remedy of filing the appeal. After the dismissal of the appeal, the only thing that the petitioner could have done is to come up with a revision challenging the order dismissing the application under Section 5 of the Act. But he has come up with the revision as against the order passed in Civil Miscellaneous Appeal. Therefore, this revision is also not maintainable.

7. This is apart from the fact that the judgment of the Court below was actually under Order XVII Rule 2 CPC. Hence, I find absolutely no merits in the above revision.

8. However, the petitioner filed an affidavit way back on 28-04-2018 seeking 10 months time to vacate. Considering the fact that the acceptance of the affidavit will put an end to the agony of the plaintiff in having to move the Executing Court, this affidavit is accepted. However, the grant of 10 months time, would eventually lead to the petitioner squatting in the property till the end of the February, 2019.

9. Therefore, the affidavit is accepted to the limited extent permitting the petitioner to vacate and hand over vacant possession, by 15-01-2019.

10. With the above concession, the Civil Revision Petition is dismissed. However, the petitioner shall pay arrears of rent if any and also shall continue to pay the monthly rent during this period. If he fails to pay the same, the concession granted will stand

withdrawn and it will be open to the respondent to execute the decree. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 20-09-2018

Ksn

