

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Revision Petition No.4714 of 2011
and
Civil Revision Petition No.4732 of 2011

COMMON ORDER:

Both Civil Revision Petitions are filed by one and the same petitioner, who is the defendant in O.S. No.1160 of 2007 on the file of III-Additional Senior Civil Judge, Vijayawada.

2. C.R.P. No.4714 of 2011 is filed challenging the order passed in I.A. No.294 of 2009, filed under Order 9 Rule 13 of C.P.C. and under Section 151 of C.P.C., to set aside the *ex parte* decree dated 7.8.2008. C.R.P. No.4732 of 2011 is filed challenging the order passed in I.A. No.295 of 2009, filed under Section 5 of the Limitation Act where delay of 275 days in filing the petition, to set aside *ex parte* decree, dated 7.8.2008, passed in O.S. No.1160 of 2007 by the III-Additional Senior Civil Judge, Vijayawada, was dismissed. Both the orders were passed on 7.3.2011 i.e., the orders under challenge in the present Civil Revision Petitions.

3. The main contention raised by the petitioner has been that there was no proper service on defendant and service was not completed and he could gain knowledge when in execution proceedings notice was served on him and, therefore, rushed to the Court bringing the said fact to the notice of the Court by filing application I.A. No.294 of 2009 for setting aside the *ex parte* decree and another application in I.A. No.295 of 2009 for condonation of delay under Section 5 of the Limitation Act.

4. The said stand was rejected by the Court below on the main ground that the publication was also resorted to as the service was not completed. Initially, summons were served and also summons were sent through courier and publication was filed, and the petitioner herein was set ex parte on 7.8.2008. Thereafter, the decree was passed ordering repayment. It is also to be found that I.A. No.295 of 2009 was also filed under Section 5 of the Limitation Act, and the same was dismissed on merits as could be seen from the last sentence of paragraph-5 of the order under challenge.

5. The fact of notice taken by way of publication and despite the same, revision petitioner failing to appear in Court completely belie the stand taken by him. Hence, certainly, it cannot be said that the orders passed by the Court of III-Additional Senior Civil Judge, Vijayawada, which are under challenge herein as irregular warranting interference and cannot be revised.

6. Therefore, the C.R.P. No.4732 of 2011 is dismissed. Consequently, C.R.P. No.4714 of 2011 filed for setting aside the ex parte decree is also dismissed in view of dismissal of CRP No.4732 of 2011. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in both the Civil Revision Petitions shall stand closed.

A. SHANKAR NARAYANA,J

Dt. 20.03.2018
gbs