

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.2004 of 2014

ORDER:

This civil revision petition is filed questioning the order, dated 01.05.2014, passed in I.A.No.1014 of 2013 in O.S.No.346 of 2010, by the Senior Civil Judge, Kadapa.

The application I.A.No.1014 of 2013 is filed to condone the delay of 845 days in filing the application to set aside the *ex parte* decree. The court below after hearing both the learned counsels dismissed the application. Questioning the same, the present revision petition is filed.

This court has heard Sri V.Venkata Kumar, learned counsel for the petitioner, and Sri Peeta Raman, learned counsel for the respondent.

The learned counsel for the petitioner submits that the lower court committed an error in passing the impugned order. He relies upon the certified copy of the plaint that is filed by him as additional material papers and states that on 24.01.2011 the summons could not have been served at all, as according to him, the plaint was registered on 26.11.2010 itself. Therefore, he states that the order passed by the lower court suffers from infirmities.

In reply thereto, the learned counsel for the respondent submits that the petitioner has not attended the court when the suit is specifically posted on 24.01.2011 and hence the suit was decreed on the said date for his non-appearance. He further submits that the only reason for the non-appearance, according to the learned counsel for the petitioner, is that the petitioner was admitted in hospital at Chennai and that he was advised not to go out of the city. The learned counsel for the respondent submits

that no other ground is raised in the application that is filed and therefore, he objects to any other fact being pressed into service in the revision petition. The learned counsel also submits that the delay is abnormal and is not satisfactorily explained.

The learned counsel for the petitioner argues that the court below committed an error and that the summons were not actually served on 27.10.2010 since the plaint itself was not registered by that date, and that therefore, all the consequential steps taken by the court below are not correct.

This court, however, notices that the affidavit is filed with very clear averments. It is clearly stated that the decree was passed against the petitioner on 24.01.2011 for his non-appearance. The reason for his non-appearance is that he underwent surgery in a hospital at Chennai and therefore, a delay of 845 days is occurred. This court notices that the lower court on the other hand states that an *ex parte* decree was passed against the petitioner on 24.04.2011. A perusal of the docket shows that the decree was actually passed on 24.01.2011 itself. As rightly noticed by the court below, the certificate produced by the petitioner does not show that the petitioner was in fact admitted in the hospital and underwent treatment till 06.04.2013. The said certificate was issued by the Doctor on 06.04.2013. As noticed by the court below, the certificate does not show when the petitioner was admitted, when the surgery was conducted and that because of the surgery/treatment he was prevented from attending the court. The learned counsel for the respondent highlighted this portion of the lower court order and submits that absolutely no reasons are forthcoming for the delay. He points out that the affidavit is

silent about the treatment, surgery etc. Therefore, he states that the lower court did not commit any error.

This court notices that for the delay of 845 days no valid or clear explanation is furnished by the petitioner. The affidavit filed in support of the application is bereft of details. It merely states that the petitioner was admitted in the hospital and the Doctor advised him to undergo surgery.

This court is of the opinion that in view of the judgment of the Hon'ble Supreme Court in *Esha Bhattacharjee v. Raghunathpur Nafar Academy*¹ there should be a clear and categorical explanation for the condonation of delay. The Hon'ble Supreme Court held that while dealing with the condonation applications, the courts should see the conduct, behavior and attitude of a party relating to his inaction or negligence in approaching the court. If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

Therefore, this court is of the opinion that no sufficient or proper cause is made out to interfere with the impugned order. The order of the lower court, dated 01.05.2014, passed in I.A.No.1014 of 2013 in O.S.No.346 of 2010 is confirmed. The Civil Revision Petition is accordingly dismissed. No order as to costs.

It is noticed that vide orders, dated 12.04.2016, this court while granting interim stay of execution of decree, directed the petitioner to deposit a sum of Rs.1,50,000/-. It was further directed that the amount so deposited should be invested in a fixed deposit.

¹ (2013) 12 SCC 649

In view of the dismissal of the civil revision petition, the stay granted on 12.04.2016 shall stand vacated and the petitioner is permitted to withdraw the amount deposited by him without furnishing any security.

Pending miscellaneous applications, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

Date: 11.12.2018

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