

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition No.2067 of 2018

ORDER:

This Civil Revision Petition is filed by the petitioner/plaintiff aggrieved by the order dated 03.01.2018 in I.A.No.1590 of 2013 in O.S.No.53 of 2011 passed by the Senior Civil Judge, Nalgonda, dismissing the petition filed by the petitioners/defendants under Section 5 of Limitation Act to condone the delay of 529 days in filing the petition under Order IX Rule 13 CPC.

2a) The respondent/plaintiff filed O.S.No.53 of 2011 seeking compensation of Rs.5 lakhs against the petitioners/defendants on the ground that Sterilization Operation conducted by Government Medical officer on 24.10.2007 failed and as a result, the respondent/plaintiff had to give birth to a female baby subsequently and it is difficult for plaintiff and her husband to bring up the child due to their financial constraints. When the petitioners/defendants failed to file written statement, they were set *ex parte* and an *ex parte* decree seems to be passed on 02.03.2012. Hence, the petitioners/defendants filed I.A.No.1277 of 2016 under Order IX Rule 13 CPC to set aside the *ex parte* decree and since there was a delay of 529 days in filing the said petition, they filed I.A.No.1590 of 2013 under Section 5 of Limitation Act to condone the delay of 529 days.

b) The respondent/plaintiff opposed the said petitions.

c) The trial Court dismissed both the petitions holding that petitioners did not properly explain the delay of 529 days.

Hence, the instant CRP.

3) Heard arguments of learned Government Pleader for Arbitration for petitioners and Smt. V.Karuna Kumari, learned counsel for respondent.

4) Fulminating the order of the trial Court, learned Government Pleader for Arbitration would submit that the trial Court was wrong in holding that petitioners failed to explain the delay. On the other hand, in the affidavit filed in support of the petition—I.A.No.1590 of 2013 the petitioners have clearly mentioned that after receiving suit summons the matter was immediately entrusted to the section in-charge to approach the Government Pleader to pursue the matter and file the necessary written statement and counter, but unfortunately the said section in-charge did not approach the Government Pleader and inadvertently kept the file in section without informing to the 2nd defendant and also without consulting Government Pleader and consequently written statement and counter could not be filed in time. In the meanwhile, the trial Court decreed the suit *ex parte* against the defendants. Learned G.P. would submit that immediately after coming to know about the mistake committed by section in-charge, the defendants approached the G.P. and filed the petition to set aside the *ex parte* decree and in the meanwhile, delay of 529 days occurred, which is neither wilful nor wanton. He would thus conclude that it is not apt on the part of trial Court to hold petitioners have not properly explained the reason for delay.

Learned G.P. would further submit that the petitioners have a strong case inasmuch as in rare cases there was a possibility of sterilization operation getting failed and plaintiff's case is one of the same and defendants have a strong *prima facie* case and therefore, an opportunity may be given to them to contest the matter.

5) Opposing the petition, learned counsel for respondent would submit that the affidavit filed in I.A.No.1590 of 2013 would clearly manifest the utter negligence on the part of defendants in prosecuting the matter. They kept the suit summons in cold storage and slept over and it was only after passing of decree the petitioners/defendants filed the present petition to nullify the decree and deprive the respondent/plaintiff from enjoying the fruits of decree. Learned counsel placed reliance on several decisions to buttress her arguments that when the petitioners failed to explain the proper reasons the delay cannot be condoned.

6) The point for determination is:

“Whether there are merits in this CRP to allow?”

7)**POINT**: As can be seen, the reasons shown by the petitioners/defendants for delay in filing the petition to set aside the *ex parte* decree is that immediately after receiving the Court summons the matter was entrusted to the section in-charge and the said officer for the reasons best known to him, kept the matter with him and did not approach the Government Pleader to file written statement and counter and it was only after passing of *ex parte* decree the defendants came to know about the mistake committed by

section in-charge and hence, immediately they filed the petition to set aside the *ex parte* decree along with delay condonation petition and they also filed written statement.

8) Now, the point is whether the petitioners could show sufficient cause for the delay of 529 days in filing the petition to set aside the *ex parte* decree. If the petition averments are true, they reflect the sorry state of affairs, where the concerned officer without feeling the responsibility and in utter niggardliness kept the Court summons in cold storage and allowed the matter to be decided *ex parte* by the Court. Such situations are not uncommon. Therefore, while considering the cause projected by the petitioners/defendants as sufficient cause, however, having regard to the fact that though the fault in the entire episode was with one officer i.e. section in-charge, but the defendants as an institution failed to respond in time due to their lackadaisical attitude, the petition is allowed only on payment of heavy costs.

9) In the result, this CRP is allowed by setting aside the order dated 03.01.2018 in I.A.No.1590 of 2013 in O.S.No.53 of 2011 passed by Senior Civil Judge, Nalgonda on payment of costs of Rs.5,000/- (Rupees five thousand only) to the respondent/plaintiff. The petitioners shall pay the costs and obtain the acknowledgement of the respondent/plaintiff and file the same before the Trial Court within four (4) weeks from the date of this order. It is informed to this Court by learned GP that as per order dated 06.04.2018 in I.A.No.1/2018, the revision petitioner deposited

Rs.1,78,497/- towards 1/4th of the decree amount and costs before the Trial Court. The said amount shall be kept in F.D by the Trial Court till disposal of the suit and pass an order relating to the said amount in its judgment.

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

U. DURGA PRASAD RAO, J

Date: 24.09.2018
Murthy

