

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.2301 OF 2018

ORDER:

The civil revision petition is filed under Section 151 of the Code of Civil Procedure (CPC) by the petitioners/defendants 1 to 4 aggrieved by the order, dated 28.03.2018 in I.A.No.130 of 2018 in O.S.No.169 of 2012 on the file of the Principal Junior Civil Judge, Miryalaguda, whereunder the learned Judge dismissed the petition filed by the petitioners/defendants 1 to 4 under Section 5 of the Indian Limitation Act read with Section 151 CPC seeking to condone the delay of 1854 days in filing the petition to set aside the *ex parte* decree passed against them on 29.12.2012.

The petitioners are defendants 1 to 4 in O.S.No.169 of 2012. The said suit was filed by the respondent/plaintiff for perpetual injunction in respect of the land in Survey No.534 of Rudraram Village, Miryalaguda Mandal, Nalgonda District. While so, the petitioners/defendants 1 to 4 were set *ex parte* when they failed to file the written statement and thereafter, the suit was decreed *ex parte* on 29.12.2012. In filing the petition under Order IX Rule 13 CPC, there was a delay of 1854 days and hence, the petitioners/defendants 1 to 4 filed I.A.No.130 of 2018 under Section 5 of the Limitation Act to condone the aforesaid delay. The ground shown for the delay is that the petitioners/defendants 1 to 4 after receiving the suit summons engaged Sri Ch.Raghu Rama Rao, to defend them in the suit and after taking Vakalath, learned counsel did not inform them about the further proceedings in the suit. Having believed the said counsel, the petitioners/defendants 1 to 4 did not approach him for enquiring about the stage of the suit. However, on 09.02.2018, suddenly they received notices in Execution Petition No.10 of 2018 and on enquiry, they came to know that their counsel did not appear and file Vakalath on their behalf and he did not defend them in the suit and thereby, they were set *ex parte* and an *ex parte* decree was passed against

them on 29.12.2012. Therefore, immediately they approached the Court and filed the petition to set aside the *ex parte* decree and in that process, there was a delay of 1854 days. The respondent/plaintiff filed counter and opposed the said petition. The trial Court ultimately dismissed the said petition holding that the petitioners/defendants 1 to 4 have not properly explained the inordinate delay of 1854 days.

Heard learned counsel for the petitioners Sri Kiran Palakurthi and learned counsel for the respondent Sri Devender Kanugu.

As can be seen, the submission of the petitioners/defendants 1 to 4 is that since their counsel did not inform them about the proceedings of the suit, they were kept in darkness and thereby they were unaware of the fact that their counsel did not file Vakalath and did not defend them in the suit and that they were ultimately set *ex parte* and an *ex parte* decree was passed against them. On that ground, they sought for condoning the delay of 1854 days. The contention of the respondent/plaintiff, as can be seen from his counter affidavit in I.A.No.130 of 2018, is that after institution of the present suit by the respondent/plaintiff, the mother of the petitioner Nos.2 and 4, namely, Ch.Radhamma, filed a suit against the respondent/plaintiff seeking perpetual injunction and the said suit was numbered as O.S.No.178 of 2012 on the file of the Principal Junior Civil Judge, Miryalaguda. They obtained *ex parte* temporary injunction against the respondent/plaintiff. Further, they again filed another suit O.S.No.198 of 2013 on the file of the Principal Junior Civil Judge, Miryalaguda in respect of the present E.P., schedule property and again obtained an *ex parte* temporary injunction. The respondent/plaintiff filed a detailed counter affidavit and written statement stating that the suit land in O.S.No.178 of 2012 and O.S.No.198 of 2013 relate to the present suit property and the Junior Civil Judge, Miryalaguda, after hearing the interlocutory applications in both the suits passed *status quo* order. Thereafter, the suits were transferred to Additional Junior Civil Judge's Court

at Miryalaguda. In his counter, the respondent/plaintiff further pleaded that the petitioners/defendants are having knowledge about the *ex parte* decree passed in the present suit. Both the suits i.e., O.S.Nos.178 of 2012 and 198 of 2013 were dismissed after full trial. Thereafter, the counsel Sri V.Venkata Ramana Reddy preferred two Appeals before the VIII Additional District Judge, Miryalaguda against the Judgment and Decree in O.S.Nos.178 of 2012 and 198 of 2013 and they were numbered as A.S.Nos.12 of 2016 and 20 of 2016 respectively. Both the Appeals were dismissed on 10.08.2017.

It is further contended that in O.S.No.198 of 2013, the present plaintiff filed written statement mentioning about the passing of the *ex parte* decree on 29.12.2012 in the present suit i.e., O.S.No.169 of 2012. The certified copy of the Judgment and decree in O.S.No.169 of 2012 are marked as Exs.B.1 and B.2 in O.S.No.198 of 2013. In that view, the petitioners/defendants 1 to 4 cannot plead ignorance about passing of *ex parte* decree against them in O.S.No.169 of 2012. He, thus, prayed to dismiss the petition.

The trial Court observed that in O.S.Nos.178 of 2012 and 198 of 2013, the certified copy of the decree in O.S.No.169 of 2012 was marked as Exhibit. In that view, the petitioners/defendants 1 to 4 cannot claim that they had no knowledge about the *ex parte* decree in O.S.No.169 of 2012 till 2018. The trial Court further observed that the same counsel, who was representing the petitioners in the instant petition, had also appeared for petitioner No.2/defendant No.2 and his mother in the Appeals filed against the Judgment and Decree in O.S.Nos.178 of 2012 and 198 of 2013. The trial Court, thus, held that the petitioners/defendants 1 to 4 were grossly negligent and they have not explained day-to-day delay in filing the petition to set aside *ex parte* decree in O.S.No.169 of 2012 and ultimately dismissed I.A.No.130 of 2018.

I have carefully gone through the order impugned. The factum of petitioners/defendants 1 to 4 filing the two suits O.S.Nos.178 of 2012 and 198

of 2013 and the respondent/plaintiff filing the certified copy of the *ex parte* decree in O.S.No.169 of 2012 in those two suits is not in dispute. In that view of the matter, as rightly observed by the trial Court, the petitioners/defendants 1 to 4 cannot plead naiveness nor ignorance about passing of the *ex parte* decree in O.S.No.169 of 2012 till 2018. So it is evident that they were well aware about passing of the *ex parte* decree. If such is the case, even assuming that their counsel has not informed them about the passing of the decree, still they had enough time to approach the Court for filing the petition to set aside the *ex parte* decree. However, they slumbered over the matter and filed the petition to set aside the *ex parte* decree with a huge delay of 1854 days. Therefore, there is no diligence on the part of the petitioners/defendants 1 to 4. It is true that generally the Courts will not allow the matters to be settled *ex parte*, because valuable rights of the parties will be at stake. However, at the same time when the parties are not showing due diligence in prosecuting the matters and slumbered over the rights, the Courts will be helpless and cannot come to their rescue. This is one of such classic examples. The impugned order does not suffer from any perversity or illegality. This Court finds no merit in the civil revision petition.

The civil revision petition is accordingly dismissed. Consequently, miscellaneous petitions, if any pending, shall stand closed. There shall be no order as to costs.

U.DURGA PRASAD RAO, J

05.06.2018
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