

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.2658 of 2018

ORDER:

The petitioner company is the defendant in O.S.No.1086 of 2017 on the file of the learned VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar. The said suit was filed by the respondent herein under Order 37 C.P.C. for recovery of a sum of Rs.11,35,756/- along with interest thereon at 18% per annum. Summons having been served upon the defendant company, it filed I.A.No.92 of 2018 in the said suit under Order 37 Rule 3(7) C.P.C. seeking condonation of the delay of 124 days in applying for leave to defend the suit. By order dated 16.03.2018, the trial Court dismissed the I.A. Aggrieved thereby, the defendant company is before this Court by way of this civil revision petition filed under Article 227 of the Constitution.

Heard Mr.E.V.V.S.Ravi Kumar, learned counsel representing Mr.B.Shiva Kumar, learned counsel for the petitioner/defendant company, and Ms.Ch.Vijaya Lakshmi, learned counsel representing Mr.Eranki Phani Kumar, learned counsel on caveat for the respondent/plaintiff.

Parties shall hereinafter be referred to as arrayed in the suit.

Perusal of the order under revision reflects that the trial Court took note of the fact that the summons were received by the defendant company on 21.07.2017 (wrongly shown as 01.08.2017 in the order under revision but correctly shown in the docket order dated 17.11.2017 passed in I.A.No.799 of 2017 in O.S.No.1086 of 2017). As the defendant company failed to appear before the Court after receipt of summons, the trial Court set it *ex parte*. It appears that the defendant company filed a wrong application in I.A.No.799 of 2017, under Order 9 Rule 7 CPC, which was dismissed on 17.11.2017. Thereafter, the defendant company filed the

subject I.A. seeking condonation of the delay in its applying for leave to defend the suit. The trial Court ultimately concluded that the defendant company failed to explain the delay satisfactorily and accordingly dismissed the I.A.

The affidavit filed in support of the subject I.A. indicates that the defendant company admitted receipt of summons on 27.07.2017 (wrongly shown as 27.06.2017 in para 5 of the affidavit) but engaged an advocate much later and he filed his valakat only on 30.08.2017. No explanation worth its name is forthcoming from the affidavit as to why the defendant company chose to sleep over the matter for over a month knowing fully well that the summons served upon it required it to take steps within ten days from the date of service thereof. In that view of the matter, no error is made out in the order under revision warranting interference.

However, as the defendant company is given a right to defend the summary suit under Order 37 Rule 3(5) CPC and the trial Court is empowered to excuse the delay on the part of the defendant company in applying for leave to defend the suit, this Court is of the opinion that the defendant company may be put on terms for the lapses committed on its part, so as to enable it to defend the suit at this stage.

The defendant company is accordingly directed to deposit 50% of the suit claim within four weeks from today and upon such deposit, the order under revision shall stand set aside and the trial Court shall permit the defendant company to defend the suit. Further, the trial Court shall permit the plaintiff to withdraw the sum so deposited by the defendant company unconditionally, but subject to the result of the suit.

The civil revision petition is disposed of with the above directions.

Interim order dated 24.04.2018 shall stand vacated. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

18th July, 2018

Note:-

Issue CC by 23.07.2018.

(B/o)

IBL

