

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.5187 OF 2017

ORDER:

This civil revision petition is filed under Section 115 C.P.C, questioning the order passed in I.A.No.1323 of 2013 in O.S.No.617 of 2009 dated 24.08.2017 passed by the III Senior Civil Judge, City Civil Court at Secunderabad, declining to condone delay of 826 days in filing a petition to set-aside the *exparte* decree passed in O.S.No.617 of 2009 dated 12.08.2011.

Petitioner herein filed I.A.No.1323 of 2013 under Section 5 of the Limitation Act to condone delay of 826 days, alleging that the petitioner is working as an Accountant in Narayana Junior College, Dilsukhnagar. But, the notice was not sent to the correct address of the petitioner. Therefore, no notice was served on the petitioner and later he came to know about passing of decree when the Manager of the Bank telephoned him and informed about passing of *exparte* decree against him. Hence, the petitioner had no opportunity to appear before the Court and since no notice was served, the petitioner could not appear and file written statement before the Court below. Consequently, the *exparte* order was passed by the Court below is illegal and prayed to condone delay of 826 days in filing petition under Order IX Rule 13 C.P.C.

The first respondent, though appeared, filed no counter.

Upon hearing argument of both the counsel, the Trial Court dismissed the petition assigning its own reasons that the petitioner did not explain the reason for his non-appearance and when the

petitioner failed to specify that he was prevented from sufficient cause, which is beyond his reasonable control and hence, the petitioner is not entitled to claim condonation of delay in filing petition under Order IX Rule 13 C.P.C.

Aggrieved by the order of the Court below, the present revision is filed on various grounds, mainly on the ground that, when no notice was served, the Trial Court ought to have considered the cause shown by the petitioner liberally without adopting pedantic approach. But, instead of following the law laid down by the Courts consistently, the Trial Court erroneously dismissed the petition on technical grounds and prayed to set-aside the same.

During hearing, learned counsel for the petitioner Sri S. Durga Prasad while reiterating the contentions urged in the affidavit, placed reliance on the judgment of this Court in **V. Linga Reddy v. V. Ram Reddy**¹ to contend that the cause shown by the petitioner has to be construed liberally to meet the ends of justice to do complete justice to the parties.

None appeared for the respondents, though notice was served.

As seen from the order passed by the Court below, more particularly, in paragraph 9 of the order, the suit was filed against Vice Principal of Narayana Junior College, Dilsukhnagar and the present petitioner who is Assistant Zonal In-charge of same college is arrayed as defendant no.2. But, the reason assigned by Court below was that, though no notice was served, notice by publication

¹ 2011 (6) ALD 425

in Eenadu Telugu daily newspaper was ordered, as per the docket proceedings and held that the publication of notice under Order V Rule 20 C.P.C is sufficient for service of notice and on that ground alone, the Court concluded that notice was served on the petitioner herein and dismissed the petition.

When the Court made an observation specifically that the notice was served by publication in Eenadu Telugu daily newspaper as per Order VI Rule 20 C.P.C, such service cannot be construed as sufficient service for purpose of limitation, as per explanation to Article 123 of Limitation Act. The observation made in paragraph 10 of the order of the Court below itself if suffice to conclude that, no personal service was effected on the petitioner, but, notice by publication under Order V Rule 20 C.P.C was ordered. Such publication cannot be construed as sufficient service for calculation of time for filing a petition under Order IX Rule 13 C.P.C.

Article 123 of Limitation Act says that, to set-aside a decree passed *exparte* or to rehear an appeal decree or heard *exparte*, the limitation is 30 days commencement from the date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree.

Here, the case of the petitioner is that, he had no knowledge about the proceedings, pending against him. In such case, the limitation of 30 days would start from the date when he acquired knowledge about the pendency of proceedings or passing of decree. The explanation thereof, made it clear that for the purpose of Article 123 of Limitation Act, substituted service under Rule 20 of

Order V of the Code of Civil Procedure, 1908 shall not be deemed to be due service. Therefore, in view of Article 123 of Limitation Act and the explanation thereto, the petitioner is not required to file an application under Section 5 of Limitation Act, since the limitation starts from the date of acquiring knowledge i.e when he received a phone call from the Manager of the Bank. But, unfortunately, the petitioner filed such an application, may be due to abundant caution. But, the Court below dismissed the petition without advertng to Article 123 of Limitation Act.

As the petitioner had knowledge about the pendency of the proceedings, only on the day when he received a phone call from the Manager of the Bank. The limitation started from the said date and in such case, the petitioner can file application within 30 days from the date of such knowledge and accordingly filed I.A.No.1323 of 2013 along with main petition. Hence, the approach adopted by the Court below is erroneous, merely because the petitioner filed an application knowingly or unknowingly or in ignorance of Article 123 of Limitation Act, the court below ought to have registered the application filed under Order IX Rule 13 C.P.C and ought to have passed an order in accordance with law, instead of entertaining the petition. Hence, the order passed in I.A.No.1323 of 2013 in O.S.No.617 of 2009 dated 24.08.2017 passed by the III Senior Civil Judge, City Civil Court at Secunderabad, is hereby set-aside, though, no such application was required to be filed along with an application under Order IX Rule 13 C.P.C, there was absolutely no delay in filing petition under Order IX Rule 13 C.P.C.

In the result, the civil revision petition is allowed by setting-aside the order passed in I.A.No.1323 of 2013 in O.S.No.617 of 2009 dated 24.08.2017 passed by the III Senior Civil Judge, City Civil Court at Secunderabad.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:15.02.2018

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