

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Civil Revision Petition.No.3275 of 2018

and CMA.No.777 of 2018

Date: 30.08.2018

Between:

Bollepalli Venkanna

..Petitioner

and

Goli Rajashekaram

..Respondent

Counsel for the Petitioner: Mr.V.Ravi Kiran Rao

Counsel for the respondent: Mr.P.Venkateswarlu

The Court made the following:



Common Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

CRP.No.3275 of 2018 arises out of Common Order, dated 13.04.2018, to the extent it pertains to IA.No.140 of 2015 in OS.No.117 of 2012 on the file of the V Additional District Judge at Bhongir.

CMA.No.777 of 2018 is filed against the aforesaid Common Order, to the extent it pertains to IA.No.140/1 of 2015.

Since the suit, the parties thereto and the order under challenge are common in both these cases, they are heard and being disposed of together with the consent of the learned Counsel for the parties.

For convenience, the parties are referred to as they are arrayed in the suit.

The vendee under a purported agreement of sale filed O.S.No.117 of 2012 for specific performance of the same against the defendant *viz.*, the appellant/petitioner in these cases. After the defendant entered appearance through a Counsel and filed written statement, an *ex parte* decree was

passed by the Court below on 23.01.2015. The defendant filed I.A.No.140/1 of 2015 under Order IX Rule 13 read with Section 151 C.P.C. for setting aside the *ex parte* decree. He has also filed I.A.No.140 of 2015 under Section 5 of the Limitation Act, 1963, for condonation of delay of 210 days in filing the aforesaid I.A. Both these Applications having been dismissed by the Court below, the defendant has filed these CMA and CRP.

We have heard Mr.V.Ravi Kiran, learned Counsel for the appellant/petitioner (defendant), and Mr.P.Venkateswarlu, learned Counsel for the respondent(plaintiff).

In support of his Applications, the defendant stated that after he has filed his written statement in the suit, the plaintiff sought several adjournments on false grounds; that unfortunately, as his Counsel met with an accident, he was not in a position to move from the bed for two months; and that he had no information with regard to the suit proceedings from his lawyer. He has further stated that thereafter, his wife fell sick; that as he was alone looking after the day-to-day affairs of his family, he could not know

the stage of the suit; and that consequently, he could not participate in the proceedings of the suit. That recently, he received summons from the Court in the Execution proceedings, upon which he came to know about the dismissal of the suit. The Court below declined to accept the aforementioned explanation filed by the defendant by stating that, having filed OS.No.137 of 2015 against his vendee, the defendant ought to have been vigilant and pursued OS.No.117 of 2012 also.

We find from the order of the Court below that it has not rejected the explanation offered by the defendant as false or unsubstantiated. On the contrary, it has relied upon the circumstance, which, in our opinion, is extraneous *viz.*, the defendant himself filing OS.No.137 of 2015. Even as per the finding of the lower Court, he has filed the said suit after his filing IA.Nos.140/1 of 2015 and 140 of 2015 for condonation of delay and setting aside the *ex parte* decree respectively.

Admittedly, the properties, which are subject matter of the suit, are very valuable. By normal standard, the delay is not unusual or extraordinary. The intendment of law is to

adjudicate the cases on merits rather than dismissing them for defaults. But, at the same time, the Courts expect the litigants to be vigilant in pursuing their cause in the litigation. In order to balance the interests of the parties, we are of the opinion that affording an opportunity to the defendant to contest the suit on merits, while, at the same time, compensating the plaintiff reasonably for the lapse committed by the defendant would meet the ends of justice.

In the above facts and circumstances of the case, both CMA.No.777 of 2018 and CRP.No.3275 of 2018 are allowed. Common Order, dated 13-04-2018, in IA.Nos.140/1 of 2015 and 140 of 2015 on the file of the V Additional District Judge, Bhongir, is set aside and IA.No.140 of 2015 and 140/1 of 2015 are allowed and OS.No.117 of 2012 is restored to its file, however, subject to the defendant paying to the plaintiff, costs of Rs.50,000/- within three weeks. The learned Counsel for the plaintiff has agreed to receive the Demand Draft of Rs.50,000/- from the defendant on behalf of his client. On proof of payment of such costs, the Court below shall proceed with the adjudication of the suit, on its own merits, from the stage at

which it was decreed *ex parte* and dispose of the same as expeditiously as possible and not later than three months from the date of receipt of this order.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 30th August, 2018
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