

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.2889 of 2018

ORDER:

The unsuccessful respondent-plaintiff filed this civil revision petition, under Section 115 of the Code of Civil Procedure, 1908 ['the Code', for short], assailing the order, dated 25.01.2018, of the learned Senior Civil Judge, Darsi, passed in IA.No.1307 of 2017 in OS No.156 of 2016.

2. I have heard the submissions of Sri G. Ramachandra Reddy, learned counsel for the revision petitioner/plaintiff ('the plaintiff', for brevity) and of Sri G. Venkata Reddy, learned counsel for the respondents/ defendants ('the defendants', for brevity). I have perused the material record.

3. At the outset, it is to be noted that the defendants, against whom an *ex parte* decree, dated 03.07.2017, was passed in the afore-said suit, filed the above mentioned Interlocutory Application under Section 5 of the Indian Limitation Act, 1963, read with Section 151 of the Code requesting to condone the delay of 102 days in filing the annexed application viz., application under Order IX Rule 13 of the Code filed for setting aside the *ex parte* decree passed against them in the said suit. The said application filed for condonation of delay was resisted by the plaintiff by filing a counter. On merits and by the orders impugned in this revision, the trial Court allowed the said petition and condoned the delay. Therefore, the aggrieved plaintiff is before this Court.

4. The case of the defendants in support of their request for condonation of delay as stated in the affidavit filed by the 1st defendant in support of the petition, in brief, is this: - 'The suit is filed for declaration of right and title of the plaintiff over the plaint schedule property (house property) and for recovery of the same from the defendants after ejecting them therefrom. The defendants received the suit summonses. On receipt of suit summonses,

defendants 2 to 4, who are the mother, wife and son of the 1st defendant, approached the 1st defendant; and, the 1st defendant stated that he would contest the matter on behalf of all the defendants and engaged an advocate. The said advocate filed vakalat. However, the 1st defendant due to his ill health could not attend before the trial Court and instruct the counsel for filing written statement. Eventually, as no written statement was filed, on 22.06.2017, the trial Court set the defendants *ex parte*. Later, on 03.07.2017, the suit was decreed *ex parte* in favour of the plaintiff and against the defendants. The 1st defendant, having come to know of the *ex parte* decree, filed the petition to set aside the *ex parte* decree. Nonetheless, as a delay of 102 days had occasioned in filing the said petition, the petition for condonation of delay is filed. There are no willful laches on the part of the defendants. They have got strong case.'

5. The plaintiff filed a counter denying the averments in the affidavit of the 1st defendant, which is filed in support of the application and, *inter alia*, contending as follows: - 'For filing written statement, the defendants have taken number of adjournments, that is, even beyond the period of 90 days allowed under law. They filed a petition, on 17.04.2017, for grant of time for filing written statement. Time was granted upto 02.06.2017. On 02.06.2017, another application was filed for grant of further time for filing written statement. Hence, the suit was adjourned to 22.06.2017 for filing written statement. As no written statement was filed on that day, the trial Court set the defendants *ex parte* and posted the suit to 03.07.2017. On that day, after the affidavit of the plaintiff *in lieu* of examination in chief was filed, the suit was decreed granting one month time to the defendants to deliver possession of the plaint schedule property. In spite of such time being granted to them and a request made by the plaintiff for delivery of possession of the property, the defendants failed to handover possession of the plaint schedule house to the plaintiff. Therefore, the plaintiff filed EP.No.31 of 2017 for delivery of the

plaint schedule house property. The executing Court by an order passed on 01.09.2017, ordered delivery of the decree schedule property by 03.10.2017. On 08.09.2017, the Court Amin went to the plaint schedule property for affecting delivery. The plaint schedule house property was identified in the presence of the plaintiff and mediators. However, the defendants bluntly obstructed for delivery of the property and threatened the Amin with dire consequences and abused him. The Field Assistant/ Amin of the Court filed a report narrating the incident that had happened at the time of proposed delivery of the property. Therefore, the decree schedule property could not be delivered to the plaintiff. Thereafter, the plaintiff filed a petition under Order XXI Rule 97 read with Section 151 of the Code for grant of police aid for delivery of the decree schedule property. The executing Court ordered notice to the defendants in the said petition. The defendants, having refused to take notices ordered to them in the said petition, filed the present petition for condonation of delay and the annexed petition for setting aside the *ex parte* decree with false and created averments. They have not even filed a counter in the EP; but, filed a counter in the Execution Application filed for grant of police protection. The allegations that due to ill-health, the 1st defendant could not attend before the Court and instruct the counsel for filing written statement are false and invented. He was hale and healthy. He never suffered any ill health. For condonation of delay, the defendants are obliged to show sufficient cause. No acceptable explanation was offered by the defendants in support of their request for condonation of delay. Moreover they kept quiet and caused obstruction for delivery of the property and abused the Court Officer, who came to deliver the property. The request of the defendants is not *bona fide*. They are intentionally harassing the plaintiff.'

6. As noted supra, the trial Court allowed the petition of the defendants and condoned the delay.

7. Learned counsel for the plaintiff, while reiterating the case of the plaintiff, which is excerpted supra, contended as follows: - 'Though it is alleged that the 1st defendant suffered ill health and could not appear before the Court and instruct the counsel for filing the written statement, no medical certificate is filed in support of the said allegations. The trial Court failed to take note of the correct legal position and erroneously failed to follow the decisions cited on behalf of the plaintiff and condoned the delay though no sufficient cause is shown and valid explanation is offered for condonation of a long delay of more than 100 days. The trial Court ought not to have believed the version that the defendants are not aware of the *ex parte* decree till notices in the Execution Petition are served upon them as they entered appearance in the suit and later remained *ex parte* without filing written statement despite granting more than 90 days time allowed under law for filing the written statement. The trial Court ought not to have condoned the delay on flimsy and false grounds raised by the defendants.'

8. *Per contra*, learned counsel for the defendants, while supporting the orders of the trial Court, contended as follows: - 'As per settled legal position, the applications for condonation of delay shall be considered liberally by exercising judicious discretion when the delay is not abnormal & deliberate, and in the absence of *mala fides*. Valuable rights in respect of the house property of a considerable value are involved. Admittedly, the defendants are in possession of the property. They have a strong case. If no opportunity is granted to contest the suit, valuable rights in respect of the said valuable property would stand defeated. Therefore, the trial Court rightly exercised the discretion in favour of the defendants. When the trial Court had allowed the petition and condoned the delay on proper exercise of the judicious discretion, this Court generally will not interfere with such well considered orders of the trial Court while exercising Revisional jurisdiction. The revision is devoid of merit and is liable to be dismissed.'

9. I have bestowed my attention to the facts and given earnest consideration to the submissions.

10. I have gone through the decisions, which are referred to in the order of the trial Court. In the said decisions, while reiterating the settled legal principles, which are of general application, the decisions were rendered having regard to the facts peculiar to the respective cases. In the case on hand, the 1st defendant has taken upon himself the responsibility of defending the case on behalf of all the defendants and got filed vakalat by engaging an advocate; later, he failed to instruct the counsel for drafting and filing the written statement. He submits that due to his ill health he could not attend before the trial Court and instruct the counsel for filing written statement and, therefore, the defendants were set ex parte and that on coming to know of the ex parte decree, he got filed the application for condonation of delay of 102 days as well as the application for setting aside the ex parte decree. The suit property is a house property in the occupation of the defendants, which according to the defendants is a valuable property. The defendants contend that they have got strong case to defend the suit. To show the *bona fides*, the written statement is also filed along with the applications. On consideration of the facts and submissions, this Court is of the considered view that it cannot be said that the delay is directly due to result of negligence or default or inaction of the defendants and hence, such delay can be condoned.

11. On analysis of all the facts and circumstances borne out by record, this Court is satisfied that the well reasoned order of the trial Court does not warrant interference. Further, generally when the trial Court exercised the discretion judiciously and allowed the petition for condonation of delay by recording reasons, which are sustainable, this Court while exercising the Revisional jurisdiction will not interfere with such discretion. Viewed thus, this Court finds that, in the case on hand, there are no circumstances, much less

exceptional circumstances, warranting interference with the order of the trial Court. Therefore, it follows that the order impugned does not brook interference.

12. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this revision shall stand closed.

JUSTICE M. SEETHARAMA MURTI

11.07.2018
Vjl

