

HON'BLE SRI JUSTICE N.BALAYOGI

CIVIL REVISION PETITION No.4906 of 2011

ORDER:

Petitioner – defendant aggrieved by the order dated 13.07.2011 passed in I.A.No.556 of 2010 in O.S.No.1375 of 2008 by the III Additional Senior Civil Judge, Vijayawada, the present Civil Revision Petition is filed.

The contention of the learned counsel for the petitioner is that the finding of the Trial Court that the petitioner has not properly explained the reason for his absence on 15.04.2009 and subsequent dates of hearing is incorrect; the petitioner's counsel, however, did not inform about the stage of the suit and for filing written statement; and, as such, there is no negligence on the part of the petitioner.

He further contended that the present application is filed to condone the delay of 254 days in filing petition to set aside *ex parte* decree dated 30.04.2009 and permit the petitioner to file written statement; and the respondent cannot take advantage of *ex parte* decree.

Per contra, respondent – plaintiff contended that the petitioner has not shown sufficient reason for the delay and had got knowledge of the suit proceedings and the dates of hearing; and, therefore, the order of the Trial Court does not suffer from any infirmity.

A perusal of the record goes to suggest that the respondent – plaintiff filed the suit for recovery of amount based on promissory note. It is a fact that when the suit was

coming up for written statement of the petitioner – defendant on 15.04.2009, he was set *ex parte* for non-filing of written statement; and, ultimately, suit was decreed on 30.04.2009. It is also clear from the impugned order that, on the date when I.A.No.556 of 2010 in O.S.No.1375 of 2008 was posted, petitioner's counsel was absent and the Court passed order by perusing the record and taking into consideration the plea of both the parties.

The above facts clearly goes to suggest that the petitioner – defendant, having received notice, appeared through counsel on 12.02.2009; the suit was finally posted for written statement as a last chance on 13.03.2009; later the suit was posted to 15.04.2009 for filing written statement; on 15.04.2009 when he went to his counsel, he informed that he would take time for filing written statement and would inform one day before the date of filing of written statement; later he came to know that he was set *ex parte* on 15.04.2009 as no written statement was filed and posted to 22.04.2009 for plaintiff's evidence; and, thereafter, the matter was adjourned to 30.04.2009, on which date, *ex parte* decree was passed.

Order VIII Rule 10 CPC contemplates pronouncement of judgment in case of failure to file written statement. Petitioner was not afforded opportunity before passing orders in I.A.No.556 of 2010. I am satisfied with the reason that, the petitioner having engaged counsel, his presence is not required on each and every date of adjournment. The matter was posted

to 13.03.2009 for filing written statement; later the counsel informed that the suit was posted to 15.04.2009; on that day, counsel informed that he would take time; on which day, petitioner was set *ex parte*; and an *ex parte* decree was passed on 30.04.2009; and, having suspected the counsel, petitioner filed I.A.No.556 of 2010 to condone the delay of 254 days in filing the petition to set aside the *ex parte* decree dated 30.04.2009 and to permit the petitioner to file the written statement and contest the suit. For the foregoing discussion and since the petitioner filed written statement along with petition in I.A.No.556 of 2010 which was filed to set aside the *ex parte* decree, I am satisfied with the cause shown for the delay. The Trial Court, without application of mind, perversely dismissed I.A. which suffers from legal infirmity warranting interference.

The Civil Revision Petition is, accordingly, allowed setting aside the order dated 13.07.2011 passed in I.A.No.556 of 2010 in O.S.No.1375 of 2008. Since the suit is of the year 2008, the Trial Court is directed to number the application filed to set aside the *ex parte* decree and dispose of the same as expeditiously as possible.

Miscellaneous petitions, if any, pending, shall stand closed.

N.BALAYOGI,J

Dt:02.11.2018
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