

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.3965 of 2018

ORDER:

The order dated 29.12.2017 in I.A.No.429 of 2014 in O.S.No.212 of 2013 passed by the learned Junior Civil Judge, Alair, dismissing the petition filed under Section 5 of Limitation Act to condone the delay of 69 days in filing the petition under Order IX Rule 13 CPC to set aside the ex-parte decree passed against the defendants on 30.06.2014 is under challenge in the instant CRP at the instance of defendants.

2a) The suit—O.S.No.212 of 2013 is filed by respondent/plaintiff seeking perpetual injunction against the petitioners/defendants in respect of two acres of agricultural land. The case of the petitioners is that on receiving suit summons, they approached the respondent/plaintiff and negotiated with her and the respondent/plaintiff agreed to withdraw the suit on the first date of their appearance and believing her words they did not appear before the Court on the date of appearance and consequently the Court set them ex-parte and later passed ex-parte decree which they came to know only when the respondent/plaintiff on the strength of ex-parte decree approached the revenue authorities for mutation of her name in respect of suit land and hence they filed the petition to set aside the ex-parte decree and as in the meanwhile, the delay of 69 days was occurred, they filed separate application to condone the said delay which was neither wilful nor wanton.

b) The respondent/plaintiff filed counter and opposed the petition denying the allegation that petitioners approached her on receiving suit summons and her promising to withdraw the suit.

c) The trial Court dismissed the petition on the observation that the averment in delay condonation petition that due to promise made by the respondent/plaintiff that she would withdraw the suit even on the first date of appearance and believing the same they remained absent without appearing before the Court on the very first date of appearance was not correct, as the petitioners/defendants appeared before the Court and subsequently they have not filed written statement and therefore they were set ex-parte and so their version in showing the cause for delay was false.

Hence the CRP.

3) Notice sent to respondent/plaintiff returned un-served with the endorsement "*addressee refused*" and hence service is presumed. Heard arguments of Sri Bankatlal Mandhani, learned counsel for petitioners.

4) Learned counsel for petitioners would submit that the observation of the trial Court that all the defendants have appeared before the Court and later they failed to file written statement and thereby they were set ex-parte and in that view, their averment in I.A.No.429 of 2014 that due to promise made by respondent/plaintiff to withdraw the suit they remained absent without attending before the Court on the first appearance day is not correct is an erroneous observation. He would submit that even as per the impugned order, defendants 2 and 3 were served and they did not appear

and hence they were set ex-parte on the first appearance day and defendant No.4 who appeared before the Court, did not file written statement and hence he was set ex-parte. Therefore, the observation of the trial Court that all the defendants appeared on the first appearance day contrary to their averment in I.A.No.429 of 2014 is not correct. Learned counsel would further submit that without going into that controversy, an opportunity may be given to the petitioners to contest the suit as their valuable rights are involved in suit land. He thus prayed to allow the petition.

5) A perusal of impugned order shows, in first para of the order the trial Court observed defendants 2 and 3 were served and they did not appear before the Court hence they were set ex-parte. Defendant No.4 appeared but did not file written statement and hence he was set ex-parte on 17.12.2013. Nothing was mentioned about defendant Nos.1 and 5. So, as can be seen from first para of the impugned order, defendant No.4 appeared and due to non-filing of written statement he was set ex-parte subsequently. The other defendants, it appears, did not attend the Court from the inception. Whether their non-appearance is due to promise made by the plaintiff or due to their lacking contestable grounds in the suit is a debatable issue, the respondent/plaintiff, of course, denied that the petitioners/defendants approached her on receiving suit summons. The petitioners/defendants have not produced any material showing that they approached the respondent/plaintiff on receiving the suit summons and questioned as to why she filed the suit. Be that it may, in the considered view of this Court, having regard to the fact that the suit is in respect of two

acres of agricultural land wherein valuable rights of both the parties are at stake, it is not apposite to allow the matter to be decided ex-parte.

6) Therefore, this C.R.P. is allowed and impugned order dated 29.12.2017 in I.A.No.429 of 2014 in O.S.No.212 of 2013 is set aside and consequently I.A.No.429 of 2014 is allowed on the condition of petitioners paying cost of Rs.500/- (Rupees five hundred only) to the Mandal Legal Services Authority, Alair on or before 10.10.2018.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

Date: 03.10.2018

Note: Office to issue CC in three (3) days.
(b/o)
Murthy

U. DURGA PRASAD RAO, J

