

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.2185 OF 2016

ORDER:

This revision petition is filed under Section 115 C.P.C. challenging the order dated 24.03.2016 in E.A.No.25 of 2016 E.P.No.47 of 2011 in O.S.No.99 of 2009 passed by the Senior Civil Judge, Kovur dismissing the application filed to condone the delay of 947 days in filing the petition to set aside the exparte order dated 08.07.2013 in E.P.No.47 of 2011 on the ground that the petitioner was residing at Tirupahi for the last six years prior to filing of the petition and he was not residing at the address mentioned either in the plaint or in the execution proceedings and thereby no notice was served, but the Court ordered notice by substitute of service under Order V Rule 20 C.P.C i.e. publication in news paper having circulation within the area. On the strength of the said publication, the Court below set the petitioner exparte. Therefore, the petitioner is entitled to get the impugned order set aside and prayed to condone the delay.

The respondent opposed the petition on the ground that before the original Court, the petitioner did not appear and contest the suit and that notice by substitute was ordered and later the decree was passed against the petitioner. When the notice was served on the petitioner by way of substitute service, the petitioner is not entitled to claim any relief for condonation of delay, much less abnormal delay of 947 days in filing the petition to set aside the exparte order.

The trial Court upon hearing arguments of both counsel concluded that service of notice by way of substitute of service under Order V Rule 20 C.P.C. is sufficient and that the petitioner did not assign any reason much less sufficient cause to condone the abnormal delay of 947 days in filing the petition to set aside the exparte order.

It is an undisputed fact that no personal service of notice was effected on the petitioner in E.P.No.47 of 2011, but served notice by way of substitute service under Order V Rule 20 C.P.C., which is sufficient and set the petitioner exparte, then proceeded to sell the property for realization of the debt due under the decree in O.S.No.99 of 2009, held auction and auction purchaser deposited the sale consideration into the Court. The only reason for dismissal of the application is service of notice under Order 21 Rule 54 C.P.C.

Article 123 of the Limitation Act deals with limitation to set aside the decree passed exparte or to rehear an appeal decreed or heard exparte and the limitation of 30 days would commence from the date of decree or whether the summons or notices were not duly served when the applicant had knowledge of the decree, but the explanation thereto made it clear that for the purpose of this article substitute service under Order V Rule 20 C.P.C., shall not be deemed to be due service.

Therefore, in view of the proviso to explanation under Article 123 of the Limitation Act, the substitute service cannot be treated as due service and the limitation would start from the date of knowledge. In fact, the petitioner is not required to file application under Order 21 Rule 106(4) C.P.C. to condone the delay in filing the petition to set aside the exparte order in E.P. since the date of knowledge is date of commencement of limitation. But knowingly or unknowingly the petitioner filed such petition to condone the delay. Hence, the impugned order is illegal and the Court below failed to exercise its jurisdiction that conferred on it, in such a case, by exercising power under Section 115 C.P.C, this Court can set aside the impugned order.

Accordingly, the civil revision petition is allowed setting aside the order dated 24.03.2016 in E.A.No.25 of 2016 E.P.No.47 of 2016 in

O.S.No.99 of 2009 passed by the Senior Civil Judge, Kovur condoning the delay 947 days in filing the petition to set aside the exparte order. There shall be no order as to costs.

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

M. SATYANARAYANA MURTHY,J

02.02.2018

Note: issue c.c. in a week.

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