

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Civil Revision Petition No.4877 of 2018

ORDER:

This revision, under Section 115 CPC, is preferred against the order passed by the III Senior Civil Judge FAC XIII Additional Senior Civil Judge (FTC), City Civil Court, Secunderabad in I.A.No.17 of 2018 (old I.A.No.1082 of 2015) in O.S.No.587 of 2011 dated 12.06.2018.

The respondents herein are the defendants in O.S.No.587 of 2011, and the petitioners herein are among the plaintiffs in the said Suit. The respondents-defendants filed I.A.No.17 of 2017, under Section 5 of the Limitation Act, to condone the delay of 557 days, in filing an application to set aside the ex-parte decree, on the ground that they had no knowledge or notice of the Suit.

In the order under revision, the Court below held that the defendants had served a legal notice prior to the Suit, and they had also lodged a caveat; the legal notice, issued prior to the Suit, showed the address of the defendants as "Door No.2-3-402 (204/C) Ramgopalpet, Secunderabad". The name of the defendant was shown as "Shaik Raimathulla" whereas he was described in the plaint as "Shaik Rahmatullah"; Door No.204/C was not included in the cause title of the plaint; the summons issued to defendants 1 and 2 (wife and husband) were returned unserved as door locked; on the premise that the defendants were avoiding summons, substitute service was ordered; the substitute service was made by way of publication in a Telugu Newspaper; the defendants, being Muslims, were justified in contending that they did not subscribe to such newspapers; the judgment passed earlier was not on

merits; the material on record was not appreciated because of lack of contest; and it was a fit case to set aside the ex-parte decree, giving opportunity to defendants 1 and 2 to contest the Suit. The Court below further observed that the plaintiff along with other defendants, who belonged to one family, had managed to obtain an ex-parte decree and judgment; the claim of the first defendant, of having executed a registered gift deed in favour of the second defendant, was required to be appraised by the Court; and, therefore, the defendants were to be given an opportunity to substantiate their grounds of defence.

The Court below has assigned reasons for condoning the delay of 557 days in filing an application to set aside the ex-parte decree and judgment, and has opined that the respondents-defendants were unaware of the institution of the Suit. The Court below has further noted that substituted service was effected by publication in a Telugu Newspaper, and the respondents-defendants being Muslims were justified in contending that they could not be said to aware of such a publication. The Court below has assigned reasons, which are just and valid, for having exercised its discretion to condone the delay of 557 days in filing the application to set aside the ex-parte decree and judgment, and to hear the Suit on merits giving the defendants an opportunity to contest the Suit. Exercise of discretion by the Court below, in condoning the delay of 557 days in filing the application to set aside the ex-parte decree, cannot be said to suffer from any patent error necessitating interference by this Court in these revision proceedings.

The Civil Revision Petition fails and is, accordingly, dismissed. The Miscellaneous Petitions, if any pending, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

Date:14.09.2018.
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