

HON'BLE SRI JUSTICE N.BALAYOGI

CIVIL REVISION PETITION No.698 of 2012

ORDER:

This Civil Revision Petition is filed against the order dated 27.12.2011 passed in I.A.No.759 of 2011 in O.S.No.239 of 2011 on the file of Additional Junior Civil Judge-cum-XVIII Metropolitan Magistrate, Cyberabad at Malkajgiri.

2. This Court, by order dated 22.02.2012, ordered notice before admission, and respondent No.1 having received notice neither appeared in person nor through counsel. Petitioners themselves made an endorsement that respondent Nos.2 and 3 are not necessary parties.

3. The contention of the learned counsel for the petitioners is that petitioners – defendants have no knowledge/notice of filing of the suit in O.S.No.239 of 2011. He further contended that substitute service was ordered in 'Janatha Telugu Daily newspapers' which does not have wide circulation and, only after receiving notice in E.P.No.10 of 2008, petitioners came to know of ex parte decree having been passed. He further contended that the earlier counsel viz. Sri T.Shiva Kumar though obtained signatures of the petitioners on several papers but failed to file an application to set aside the ex parte decree in collusion with the opposite side.

4. From the affidavit, it is very clear that the petitioners specifically stated that respondent – plaintiff filed suit in O.S.No.239 of 2001 seeking perpetual injunction but, however, no notice was served on them. Respondent – plaintiff

filed an application, under Order V Rule 20 CPC, seeking paper publication in Janatha Telugu Daily. Petitioners state that they have no knowledge about the suit or the publication in Janatha Telugu Daily and, only after receiving notice in E.P.No.10 of 2008, they came to know that they were set *ex parte* on 23.06.2006 and *ex parte* decree was passed on 07.07.2006. Petitioners further state that though his earlier counsel obtained signatures on several papers, no steps were taken to set aside the *ex parte* decree in O.S.No.239 of 2001 and therefore, engaged the present counsel who filed the present application in I.A.No.759 of 2011 under Section 5 of the Limitation Act to condone the delay of 1732 days.

5. The Trial Court observed that the petitioners did not choose to assign any reason for such inordinate delay except blaming their previous counsel of collusion with respondent; and, relying on Ex.R.1, copy of plaint in O.S.No.2 of 2007, the Trial Court observed that the petitioners had knowledge of the suit in the month of January, 2007 itself. The Trial Court also observed that the petitioners failed to show sufficient reason to condone the delay and the affidavit is silent as to when they came to know of the judgment and decree. The Trial Court without considering the facts that substitute service was effected in Janatha Daily newspaper which does not have wide circulation and, only after notice was served in E.P.No.10 of 2008, petitioners came to know about the *ex parte* decree having been passed; and his earlier counsel did not take steps to get set aside the *ex parte* decree, recorded a finding that the

petitioners did not act diligently having knowledge of the suit in the year 2007 itself.

6. In the facts and circumstances of the case, I am of the considered view that the Trial Court dismissed the application without application of mind and the petitioners have shown sufficient cause for condoning the delay and, by condoning the delay, no prejudice would be caused to the respondent – plaintiff and an application, under Order 9 Rule 13 CPC, to set aside the ex parte decree, be numbered and dispose of the same on merits.

7. Accordingly, the Civil Revision Petition is allowed without costs while setting aside the order dated 27.12.2011 passed in I.A.No.759 of 2011 in O.S.No.239 of 2011 on the file of Additional Junior Civil Judge-cum-XVIII Metropolitan Magistrate, Cyberabad at Malkajgiri, and the delay of 1732 days is condoned.

8. Since the suit is of the year 2001, the Trial Court shall number the application, under Order 9 Rule 13 CPC, and dispose of the same within two months from the date of receipt of a copy of this order.

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

N.BALAYOGI,J

Dt:12.12.2018
Note:CC one week
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