

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

CIVIL REVISION PETITION NO.5998 OF 2018

ORDER:

Aggrieved by the order dated 09.07.2018 passed by the V Senior Civil Judge, City Civil Court, Hyderabad, the petitioner has approached this Court.

Briefly stated, the petitioner filed an application for setting aside the *ex-parte* order dated 02.06.2014 passed in Eviction Suit. Along with the application, he had also submitted an application under Section 5 of the Limitation Act read with Section 151 of the Code of Civil Procedure (CPC) for condoning the delay of 1323 days. However, after hearing the parties, the learned Trial Court dismissed the application for condonation of delay; consequently, the application for recalling of the *ex-parte* decree was dismissed. Hence, this Civil Revision Petition before this Court.

Mr. K. Srinivasa Rao, the learned counsel for the petitioner, pleads that even after the decree was passed on 02.06.2014, the landlord did not proceed for execution of the decree till 2017. Thus, the landlord (respondent) himself kept the petitioner in the dark. Therefore, the learned Court was not justified in dismissing the application for condonation of delay.

Heard the learned counsel for the petitioner and perused the impugned order.

The delay in filing the application for recalling the *ex-parte* decree is not a short one, as the delay of 1323 days is sought to be condoned by the Court.

A bare perusal of the impugned order clearly reveals that the learned Court has clearly noted that the address given in the

summons issued by the learned Trial Court and the address given in the application presently filed by the petitioner are exactly the same. Moreover, on 25.04.2013 the summons were received by one Mr. Mushtaq. The receipt of having received the summons not only bears the signature of Mr. Mushtaq, but also is affixed with the seal of the petitioner. Further, the petitioner has nowhere denied that Mr. Mushtaq was an employee of his. Therefore, the learned Trial Court was justified of relying on Order V Rule 13 of CPC to draw the inference that the summons were duly received by an agent of the petitioner. Hence, the stand taken by the petitioner before the learned Trial Court that he had no knowledge about the issuance of the summons till 15.09.2017, when he received the notice from the Executing Court, is clearly falsified by the record.

Furthermore, the learned Trial Court has noticed the fact that even after coming to know about the *ex-parte* decree on 15.09.2017, the petitioner did not file the application for recalling of the *ex-parte* order till 16.02.2018 i.e. after an inordinate delay of five months. Although, he has tried to explain that during this period of five months he was ill, the petitioner did not even bother to submit a medical certificate to support the said plea.

It is, indeed, trite to state that a Court of law does not rush to the rescue of a litigant who sleeps over his rights. In the present case, the petitioner has slept over his rights for over 1323 days. Even after having received the summons from the trial Court, he has not bothered to contest the suit. Thus, the learned Trial Court was certainly justified in proceeding *ex-parte* against him.

Merely because the respondent-plaintiff did not move the Executant Court for three years, it would not entitle the petitioner to have the *ex-parte* decree set aside.

For the reasons stated above, this Court does not find any merit in the revision petition. The revision petition is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAGHVENDRA SINGH CHAUHAN, J)

6th December 2018
RRB

