

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.1008 of 2013

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908, is filed by the petitioners/defendants, challenging the order, dated 12.02.2013, passed in I.A.No.163 of 2012 in O.S.No.42 of 2011, by the Junior Civil Judge at Mulugu, whereby, the petition filed by the revision petitioners/defendants under Section 5 of the Limitation Act, 1963, to condone the delay of 143 days in filing the application to set aside the *ex parte* decree, dated 21.12.2011, was dismissed.

2. Heard the learned counsel for both the sides and perused the record.

3. The learned counsel for the revision petitioners/defendants would submit that in spite of showing sufficient and justifiable cause, the Court below declined to condone the delay of 143 days in filing the application to set aside the *ex parte* decree, dated 21.12.2011. The revision petitioners/defendants have got documents to their credit to substantiate their case. The revision petitioners/defendants, being agriculturists and rustic persons, are not aware of the legal procedures. As there were laches on the part of the advocate representing the revision petitioners/defendants before the Court below, *ex parte* decree, dated 21.12.2011, came to be passed. Since the subject suit is for perpetual injunction, substantial justice is required to be rendered and an opportunity is required to be given to the

revision petitioners/defendants to put forth their defences in the suit and ultimately prayed to set aside the order under challenge and allow the Civil Revision Petition as prayed for.

4. On the other hand, the learned counsel for the respondents/plaintiffs would contend that there are grave laches on the part of the revision petitioners/defendants. The subject suit is of the year 2011 and it was decreed *ex parte* on 21.12.2011. The revision petitioners/defendants were not diligent in pursuing the subject suit. Unnecessarily, blame was thrown on the counsel representing the revision petitioners/defendants before the Court below. There are no justifiable grounds to allow the Civil Revision Petition. The Court below passed a reasoned order. There is nothing to take a different view and ultimately prayed to dismiss the Civil Revision Petition.

5. In view of the above rival contentions, the point that arises for determination in this Civil Revision Petition is as follows:

“Whether order, dated 12.02.2013, passed in I.A.No.163 of 2012 in O.S.No.42 of 2011, by the Junior Civil Judge at Mulugu, is liable to be set aside.”

6. It is evident from the record that on receipt of summons from the Court below in the subject suit, the revision petitioners/defendants have engaged an advocate to represent them. Though the matter was adjourned on three occasions for filing written statement of the revision petitioners/defendants,

the revision petitioners/defendants did not file their written statement. Therefore, they were set *ex parte* by the Court below and *ex parte* decree, dated 21.12.2011, was passed. The revision petitioners/defendants have stated clearly in their affidavit filed in support of the subject interlocutory application, the circumstances that led to passing of the *ex parte* decree. They stated that they contacted their advocate on several occasions and made enquiries with regard to the status of the suit.

7. Admittedly, the revision petitioners/defendants are agriculturists. They were not properly informed about the legal proceedings by their advocate. There is also record to show that notices were also issued to the advocate on record for the revision petitioners/defendants seeking no objection from him. The revision petitioners/defendants further stated that when they went to the office of their counsel, their counsel was not available. Likewise, other reasons are also incorporated in the affidavit. Admittedly, the suit is for perpetual injunction. Substantial rights of parties are required to be determined. In the given circumstances, it cannot be said that the revision petitioners/defendants have not pursued the matter with due care and diligence. Further, the laches on the part of the advocate representing the revision petitioners/defendants before the Court below cannot be ruled out. In the given circumstances, the Court below ought to have condoned the delay, instead of dismissing the subject interlocutory application.

The delay is not abnormal. Moreover, it is always better to decide the matter on merits rather than on technicalities. Under these circumstances, this Court is satisfied that sufficient cause is shown by the revision petitioners/defendants to condone the delay of 143 days in filing the application to set aside the *ex parte* decree, dated 21.12.2011. Therefore, the impugned order is liable to be set aside.

8. Under these circumstances, the impugned order, dated 12.02.2013, passed in I.A.No.163 of 2012 in O.S.No.42 of 2011, by the Junior Civil Judge at Mulugu, is set aside. Consequently, I.A.No.163 of 2012 in O.S.No.42 of 2011 on the file of the Court below stands allowed as prayed for.

9. The Civil Revision Petition is, accordingly, allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

Dr. SHAMEEM AKTHER, J

13th November, 2019
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