

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

CRP. No.256 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.22.10.2018 passed in I.A. No.1002 of 2016 in O.S. No.699 of 2013 by the XIV Additional District Judge, Ranga Reddy District at L.B.Nagar.

2. Petitioner herein is the defendant in the said suit.
3. The respondent filed the said suit against the petitioner for recovery of sum of Rs.45,00,000/- allegedly borrowed by the petitioner through a promissory note Ex.A.1 dt.04.04.2011. He contended that the petitioner failed to repay the said amount in spite of several demands; that he got issued legal notice to the petitioner marked as Ex.A.2 dt.03.06.2013 and he filed Ex.A.3 acknowledgement of the receipt of cover by the petitioner.
4. Summons in the suit was sought to be served on the petitioner but were not served.
5. However on 29.10.2014 the summons were returned with an endorsement "not claimed" and the postal cover appearing with said endorsement was taken note of by the Court below. It treated that summons got served on the petitioner and set him *ex parte*. Thereafter, *ex parte* decree was passed on 09.11.2015 by the Court below.

6. Subsequently, execution petition was filed on 14.10.2016 by the respondent to execute the said decree seeking attachment of the salary of the petitioner by his employer.

7. At that stage, petitioner filed I.A.No.1002 of 2016 under Section 5 of the Limitation Act, 1963 to condone the delay of 366 days in filing application to set aside the *ex parte* decree dt.09.11.2015 in O.S. No.699 of 2013 and also to set aside the *ex parte* decree.

8. In the affidavit filed in support of the said application it is the contention of the petitioner that the suit promissory note itself was a fabricated and false address of the petitioner was given in the suit in order to ensure that notice sent was not served on him and to obtain an *ex parte* decree. It is alleged that the petitioner had not worked or was stationed at the address mentioned in the plaint by the respondent and had been working at some other facility/premises. It is also contended that petitioner was posted to Guntur office temporarily vide company letter dt.08.08.2013 and that his posting was extended from time to time till August, 2014. It is alleged that only in execution petition correct address of the petitioner was shown, and by deliberately suppressing the correct address of the petitioner, *ex parte* decree was obtained.

9. Counter affidavit was filed by the respondent opposing the said application and denying the allegations that wrong address of the petitioner was given in the plaint. It is alleged that petitioner and his

parents were tenants of the respondent and the petitioner obtained a sum of Rs.45,00,000/- and executed a promissory note in question and later failed to repay the amount. It is also stated that the petitioner shifted to Chennai for his job and evaded payment, and the suit was filed mentioning the address of the petitioner as stated in the promissory note as well as his job place at Chennai, but the petitioner managed to evade receipt of notice. It is also alleged that prior to filing of the suit, notice had been got issued by the respondent to the petitioner and it was sent to his job address and was served on the petitioner, but he did not reply to it. It is alleged that the petitioner knowingly did not appear before the Court and there was every possibility of change of address of the petitioner to avoid service in future and it is very difficult to recover the amount covered by the decree. It is also stated that the petitioner appeared before the Court only when his salary was attached when he was having no other option and filed the petition under Order IX Rule 13 CPC with an inordinate delay of 366 days.

10. In I.A. No.1002 of 2016, the petitioner did not enter into the witness box or lead any evidence to show that after the suit was filed he was not residing at the address shown in the plaint. The Court below recorded that the postal cover containing summons was returned on 29.10.2014 with an endorsement “not claimed”, and that this amounts to deemed service. It also held that petitioner did not explain as to how and when he came to know about the suit

proceedings and day to day delay in filing this application has not been explained.

11. Assailing the same, this Revision is filed.

12. Counsel for the petitioner contended that the petitioner did not receive any summons in the suit, that his address was not correctly shown in the plaint, and by playing fraud on the Court and the petitioner, *ex parte* decree was obtained by the respondent in the suit.

13. He did not deny that the petitioner did not come into the evidence box and did not mark any document to show that petitioner was not residing on the address shown in the plaint. It is also not in dispute that before filing of the suit Ex.A.2 legal notice dt.03.06.2013 was issued by the respondent to the petitioner and the address shown in the said notice is the same address, which is shown in the plaint, and it included the address of the petitioner's employer M/s.Balmer Lawrie and Company Limited at Chennai.

14. The material papers filed along with the Revision indicate that the petitioner got a reply legal notice issued on 12.06.2013 through an Advocate B.Chandra Shekar (as Ex.A-2 legal notice) to the respondent. This establishes that the petitioner was residing at one point of time at the address indicated in the plaint by the respondent.

15. The suit itself came to be filed on 13.06.2013. If it is the case of the petitioner that he was transferred to some other place by his

employer thereafter, the burden of proof is on the petitioner to establish the said fact.

16. As stated above, he neither went into the witness box in I.A.No.1002 of 2016 nor produced any document to show that he was transferred to a different place by his employer.

17. Therefore, the Court below cannot be said to have committed any error of jurisdiction in refusing to condone the delay of 366 days in filing I.A., under Order IX Rule 13 CPC to set aside the *ex parte* decree passed in O.S. No.699 of 2013.

18. Accordingly, this Revision fails and is dismissed. There shall be no order as to costs.

19. As a sequel, miscellaneous applications, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19.06.2019
LSK