

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.600 of 2019

ORDER:

This Revision is filed assailing the order dt.29.01.2019 in I.A. No.438 of 2017 in O.S. No.25 of 2017 on the file of Senior Civil Judge at Kamareddy.

The petitioners are defendants in the suit.

The respondent/plaintiff filed the suit for declaration of title and perpetual injunction. The petitioners remained *ex parte* and an *ex parte* decree was passed on 13.10.2017.

On 23.10.2017, the petitioners filed I.A. No.438 of 2017 to set aside the set *ex parte* decree invoking the Order IX Rule 13 CPC contending that the 3rd respondent was an agriculturist who was busy with agricultural operations; that twenty days prior to 13.10.2017, he fell sick due to jaundice and viral fever; and so he could not contact the counsel to prepare written statement and an *ex parte* decree was passed. He stated that the said decree be set aside and the suit be restored to file by the court and the petitioners be allowed to contest the matter by filing written statement.

Counter-affidavit was filed by the respondent opposing the said application and denying that the 3rd respondent was sick. It is also contended that all the three petitioners had engaged the same counsel to defend them and after lapse of more than the time stipulated under law to file written statement, they cannot be permitted to contest the suit. Reference is also made to I.A filed on 06.07.2017 seeking enlargement of time to file written statement filed by counsel for petitioners wherein it is alleged that the 1st petitioner was looking after the case previously, but he was unable to contact counsel due to sickness of her mother and so could

not file the written statement. It is contended by the respondent that the pleading in this application is inconsistent with the pleading in I.A. No.438 of 2017.

By order dt.29.01.2019, the court below allowed the said I.A. No.438 of 2017 on payment of costs of Rs.500/- to the petitioner.

Assailing the same this Revision is filed.

Counsel for the petitioner contended that the respondents did not show sufficient cause for setting aside the *ex parte* decree and there was no evidence of illness of the 3rd respondent.

It is the case of the respondents that the 3rd respondent had been sick on account of viral fever and jaundice and also that he was busy with agricultural operations and so could not instruct counsel to prepare written statement to file in the case.

No documentary evidence about the illness is filed by the respondent, but when application to setting aside the *ex parte* decree is filed within thirty days from the date of passing of the *ex parte* decree, normally the delay is liable to be condoned.

The words “prevented by any sufficient cause” in Order IX Rule 13 CPC have to be liberally construed to enable the court to do complete justice between the parties when no negligence or inaction is imputable to the erring party. Sufficient cause for non-appearance refers to the date on which the absence was made on ground for proceeding *ex parte* and cannot be stretched to rely upon other circumstances anterior in time. So, previous negligence cannot be taken into account. **(G.P. Srivastava v. R.K. Raizada¹).**

I am also unable to accept the contention of the petitioner that in July, 2017 the petitioners filed an affidavit through their counsel that mother of the 1st petitioner was sick, and so they cannot plead in October,

¹ (2000) 3 SCC 54

2017 that the 3rd respondent had jaundice or viral fever. Between July, 2017 and October, 2017, the possibility of the 3rd respondent getting sick cannot be ruled out.

When valuable rights to property are involved in the suit and when the respondents had immediately filed the application to set aside the *ex parte* decree within ten days of the *ex parte* decree being passed, the court below had rightly set aside the *ex parte* decree taking note of the difficulty of the respondents in approaching the court on account of the illness of the 3rd respondent.

I therefore do not find any error of jurisdiction in the order passed by the court below warranting interference by this court under Article 227 of the Constitution of India with its order.

The Revision Petition fails and is, accordingly, dismissed. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

Date: 24.07.2019

MRKR