

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

and

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

Unnumbered Interlocutory Application No. of 2019

in

Interlocutory Application No.1 of 2019

in

Civil Revision Petition No.1332 of 2019

and

Civil Revision Petition No.1332 of 2019

ORDER : (per Hon'ble M.S. Ramachandra Rao)

This Civil Revision Petition is filed challenging the order dt.27.03.2019 passed in Interlocutory Application No.3452 of 2018 in O.A.No.494 of 2017 on the file of Debts Recovery Tribunal-I at Hyderabad.

2. The petitioner herein is respondent in the above O.A. which was filed by 1st respondent-Bank herein for recovery of Rs.16,14,239/- on the basis of a mortgage deed executed by petitioner with regard to a loan of Rs.10 lakhs granted to petitioner by 1st respondent-Bank on 06.06.2011.

3. Equitable mortgage of certain properties belonging to petitioner was also created by deposit of title deeds on 02.06.2011 in favour of 1st respondent-Bank.

4. Having received summons in the O.A., the petitioner did not file counter-affidavit or contest the same, and an *ex parte decree* was passed on 14.12.2017 in O.A.No.494 of 2017.

5. After a period of 311 days, the petitioner filed Interlocutory Application No.3452 of 2018 under Section 5 of the Limitation Act, 1963 to condone the delay of (311) days in filing the application to set aside the *ex parte decree* dt.14.12.2017 passed in O.A.No.494 of 2017.

6. In the affidavit filed in support of this application it is contended by the counsel for petitioner that she suffered severe ill-health and loss in agriculture due to which she went into deep depression for which she was taking regular treatment and so she had no knowledge of service of summons. It is contended that she could not defend the O.A. by engaging an Advocate for the said reason.

7. Counter-affidavit was filed by the 1st respondent-Bank opposing the condonation of delay in filing the application to set aside the *ex parte decree*.

8. In the counter-affidavit it was stated that petitioner, through an Advocate, had filed a Memo and offered Vakalat on 13.10.2017. But, later she did not appear before the Tribunal and finally on account of non-appearance of petitioner and the other defendant in the O.A. they were set *ex parte*, and an *ex parte decree* dt.14.12.2017 was passed against them. It was contended that the petitioner willfully did not

participate in the proceedings in the suit and the application has been filed only to drag on the matter, and to delay the proceedings.

9. By order dt.27.03.2019, the Debts Recovery Tribunal-I, Hyderabad dismissed Interlocutory Application No.3452 of 2018 in O.A.No.494 of 2017. After referring to the contentions of the parties, the Tribunal held that petitioner was served with summons and she had also offered *Vakalat* through a Counsel and thereafter did not appear before the Tribunal; that petitioner had abstained from attending before the Tribunal and is pleading ignorance on the ground of severe illness; and so, sufficient cause is not shown for condoning the said inordinate period of delay of (311) days in filing the application to set aside the *ex parte decree* dt.14.12.2017.

10. Assailing the same, the present Civil Revision Petition is filed.

11. This Court on 14.06.2019 granted interim stay of the proceedings in R.P.No.33 of 2018 in O.A.No.494 of 2017 and later the stay was extended on 28.06.2019 until further orders in Interlocutory Application No.1 of 2019 in Civil Revision Petition No.1332 of 2019.

12. Unnumbered I.A. of 2019 is filed to vacate the order granted on 14.06.2019 in Interlocutory Application No.1 of 2019 in Civil Revision Petition No.1332 of 2019.

13. The counsel for the 1st respondent-Bank, Sri M. Srinivas Reddy, contended that no evidence has been adduced by the petitioner about

the alleged illness and since the said plea has not been substantiated, the order of the Tribunal cannot be found fault with, for rejecting the application for condonation of delay in filing the application to set aside the *ex parte decree* dt.14.12.2017 in the said O.A.

14. The counsel for petitioner further reiterated that petitioner is a lady who is also an agriculturalist and because of losses, she suffered severe depression for which she was taking treatment, and so she had no knowledge about service of summons and could not defend the case by engaging an Advocate.

15. There is no material placed on record by the petitioner to show that she suffered serious illness and depression because of which she could not defend her case in the O.A. The service of summons on the petitioner in the O.A. is not desired. So, she admittedly had knowledge of proceedings in the O.A.

16. In this view of the matter, we are of the opinion that petitioner has failed to show sufficient cause to condone the inordinate delay of (311) days in filing the application to set aside the *ex parte decree* dt.14.12.2017 in O.A.No.494 of 2017.

17. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

18. Consequently, the interim order granted on 14.06.2019 in Interlocutory Application No.1 of 2019 in Civil Revision Petition No.1332 of 2019 is vacated; and unnumbered I.A. of 2019 in

Interlocutory Application No.1 of 2019 in Civil Revision Petition No.1332 of 2019 is allowed.

19. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE K. LAKSHMAN

Date: 20.11.2019

Ndr/*

