

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
CIVIL MISCELLANEOUS APPEAL No.781 of 2019
AND
CIVIL REVISION PETITION No. 1193 OF 2019

COMMON JUDGMENT:

Since the facts of the case, parties to the litigation and issues involved are identical and since both these cases arise out of the common order passed by the Court below, both these matters are being disposed of by this common judgment.

2) C.M.A.No.781 of 2019 is filed under Order XLIII Rule 1 of the Code of Civil Procedure, 1908, by the appellants/defendant Nos.2 to 6, aggrieved by the order, dated 18.03.2019, passed in I.A.No.107 of 2019 in O.S.No.1671 of 2012 by the V Senior Civil Judge, City Civil Court, Hyderabad, wherein the subject interlocutory application filed by the appellants/defendant Nos.2 to 6 under Order IX Rule 13 read with Section 151 of CPC requesting to set aside the *ex parte* preliminary decree and judgment, dated 25.04.2015, passed in the subject suit, was dismissed.

3) C.R.P.No.1193 of 2019 is filed under Section 115 of CPC, by the petitioners/defendant Nos.2 to 6, aggrieved by the order, dated 18.03.2019, passed in I.A.No.108 of 2019 by the V Senior Civil Judge, City Civil Court, Hyderabad, wherein the subject interlocutory application filed by the revision petitioners/defendant Nos.2 to 6 under Section 5 of the Limitation Act, 1963, requesting to condone the delay of 870

days in filing the petition to set aside the *ex parte* preliminary decree, dated 25.04.2015, was dismissed.

4) Heard the learned counsel for both sides and perused the record.

5) Since the relief claimed in C.M.A.No.781 of 2019 is consequential to the relief claimed in C.R.P.No.1193 of 2019, it is appropriate to decide C.R.P.No.1193 of 2019 at the first instance.

6) The learned counsel for the appellants/revision petitioners/defendant Nos.2 to 6 would contend that a wrong house number was mentioned on the summons that were sent to the appellants/revision petitioners/defendant Nos.2 to 6. The respondent No.1/plaintiff has committed a mistake in obtaining the *ex parte* preliminary decree and judgment, dated 25.04.2015. It is further contended that since the revision petitioner No.1/defendant No.2, who was set ablaze by the respondent No.1/plaintiff, was taking treatment, delay occurred in filing the subject I.A.No.107 of 2019 to set aside the *ex parte* preliminary decree, dated 25.04.2015. Though there are genuine reasons to condone the delay in filing the petition to set aside the *ex parte* decree, dated 25.04.2015, the Court below dismissed the subject I.A.No.108 of 2019, which is erroneous, and ultimately prayed to set aside the impugned common order, dated 18.03.2019, passed in I.A.Nos.107 and 108 of 2019 passed by the Court below and allow both the Civil Revision Petition and the Civil Miscellaneous Appeal as prayed for.

7) On the other hand, the learned counsel for the respondent No.1/plaintiff in both these matters would contend that the allegation of commission of fraud as well as setting ablaze the revision petitioner No.1/defendant No.2 made against the respondent No.1/plaintiff are false. The respondent No.2/defendant No.1, who is mother of the revision petitioners/defendant Nos.2 to 6, earlier filed I.A.No.149 of 2017 to condone the delay in filing the petition to set aside *ex parte* decree and the same was allowed by the Court below, vide order dated 28.07.2017. A Civil Revision Petition in CRP No.5220 of 2017 preferred by the respondent No.1/plaintiff against the said order was allowed by this Court by setting aside the order, dated 28.07.2017. The revision petitioners/defendant Nos.2 to 6, though having knowledge with regard to the filing of the subject suit and its proceedings, failed to show sufficient cause to condone the delay. Therefore, the Court below rightly dismissed both the subject interlocutory applications, assigning reasons and ultimately prayed to dismiss both the Civil Miscellaneous Appeal and Civil Revision Petition.

8) In view of the submissions made by both sides, the point that arises for determination in both these C.R.P. and C.M.A. is as follows:

“Whether the common order, dated 18.03.2019, passed in I.A.No.107 and 108 of 2019 in O.S.No.1671 of 2012, by the V Senior Civil Judge, City Civil Court, Hyderabad, is liable to be set aside?”

9) As seen from the material placed on record, an allegation was made against the respondent No.1/plaintiff by the revision petitioners/defendant Nos.2 to 6 that he set ablaze the revision petitioner No.1/defendant No.2, but the details of the said incident, i.e., date and place of the incident, place where treatment was taken etc., were not furnished. There is also mention in the affidavit filed in support of I.A.No.108 of 2019 that the revision petitioners/defendant Nos.2 to 6 also instructed their advocate to file an application to set aside the *ex parte* preliminary decree along with their mother/respondent No.2/Defendant No.1, but their advocate did not do so. Their advocate filed I.A.No.149 of 2017 on behalf of their mother/respondent No.2/defendant No.1 only. These factual aspects clearly establish that the revision petitioners/defendant Nos.2 to 6 were having knowledge with regard to the passing of the subject *ex parte* preliminary decree. It is also pertinent to note that I.A.No.149 of 2017, filed by the respondent No.2/defendant No.1/mother of the revision petitioners, to condone delay in filing a petition to set aside the *ex parte* preliminary decree, dated 25.04.2015 was allowed. However, when the respondent No.1/plaintiff challenged said order before this Court by filing CRP No.5220 of 2017, this Court was pleased to allow the revision by setting aside the order, dated 28.07.2017. Further, the record clearly shows that when there was no service of summons on the revision petitioners/defendant Nos.2 to 6, a publication was made in the local newspaper. Thereafter, due to non-appearance of the revision

petitioners/defendant Nos.2 to 6, the subject *ex parte* preliminary decree was passed on 25.04.2015. It is also relevant to state that the revision petitioners/defendant Nos.2 to 6 participated in the final decree proceedings in I.A.No.200 of 2016 and also I.A.No.201 of 2016 filed by the respondent No.1/plaintiff for appointment of an advocate commissioner. Therefore, it cannot be said that the revision petitioners/defendant Nos.2 to 6, being family members of respondent No.2/defendant No.1, did not have knowledge of the proceedings in subject suit.

10) Section 5 of the Limitation Act, 1963, reads as follows:-

“EXTENSION OF PRESCRIBED PERIOD IN CERTAIN CASES —
Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

It is settled law that a person seeking relief under Section 5 of the Limitation Act, 1963, has to satisfy the Court that he has sufficient cause to condone the delay. In the instant case, absolutely there is no such explanation on behalf of the revision petitioners/ defendant Nos.2 to 6 to condone the delay. Furthermore, even though the revision petitioners/defendant Nos.2 to 6 had knowledge with regard to passing of *ex parte* order on 25.04.2015, and giving of instructions to their advocate to file condone delay application along with their mother and also participating in the final decree proceedings,

the revision petitioners/defendant Nos.2 to 6 have filed subject Interlocutory Application belatedly without explaining sufficient cause as required under Section 5 of the Limitation Act, 1963. The allegation of fraud against the respondent No.1/plaintiff is made only to overcome the delay caused in filing the petition to set aside the *ex parte* preliminary decree. The Court below, having considered all the contentions raised by the revision petitioners/ defendant Nos.2 to 6, rightly dismissed both the subject interlocutory applications. There is no perversity in the impugned orders passed by the Court below. There is nothing to take a different view. C.R.P.No.1193 of 2019 is devoid of merit and is liable to be dismissed.

11) Accordingly, C.R.P.No.1193 of 2019 is dismissed. In view of the orders passed in C.R.P.No.1193 of 2019, C.M.A.No.781 of 2019 stands dismissed.

Miscellaneous petitions, if any, pending in both these matters, shall stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 20.12.2019
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