

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.2698 of 2018

ORDER :

Heard both sides.

2. This Civil Revision Petition is filed challenging the order dt.04.04.2018 passed in I.A.No.365 of 2015 in O.S.No.745 of 2010 on the file of IV Additional District Judge, Ranga Reddy District, at L.B. Nagar.

3. The petitioner herein is defendant in the above suit.

4. The respondent / plaintiff filed the said suit against petitioner for recovery of physical possession of the suit schedule property, for *mesne* profits, damages and costs.

5. The petitioner received summons in the suit and engaged a Counsel.

6. Written Statement was also filed by petitioner disputing the claim of respondent.

7. After issues were framed and trial commenced, the defendant's counsel did not appear and cross-examine PW.1, and so she was set *ex parte*.

8. Ultimately, an *ex parte* decree came to be passed on 31.10.2014 in the suit.

9. Eighty-five days thereafter, petitioner filed I.A.No.365 of 2015 under Section 5 of the Limitation Act, 1963 to condone the delay of (85) days in filing the petition to set aside the *ex parte* decree dt.31.10.2014.

10. In the affidavit filed in support of the said application, she stated that her counsel had met with an accident and was therefore not able to pursue the matter in the Court resulting in the *ex parte* decree; that after passing of the decree, the petitioner was bed-ridden due to attack of Jaundice and was taking tree medicine and could not contact the counsel; and so, there was a delay of (85) days in seeking to set aside the *ex parte* decree.

11. A separate application I.A.No.364 of 2015 was also filed by petitioner under Order IX Rule 13 read with Section 151 of Civil Procedure Code, 1908 seeking to set aside the *ex parte* decree.

12. Counter-affidavit was filed by respondent opposing this application and contending that several opportunities had been given to petitioner and her counsel during pendency of suit, but they did not avail of it, and therefore, no indulgence should be shown to her. It was also contended that the allegations made in the affidavit filed in support of the application for condonation of delay are false.

13. By order dt.04.04.2018, the Court below dismissed the said application. It referred to the contentions of parties and observed that no evidence was adduced by petitioner to prove her ill-health, i.e.,

Jaundice, because of which she allegedly could not appear before the Court.

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

15. The counsel for petitioner contended that the Court below could not have rejected the application for condonation of short period of delay of (85) days in filing the petition under Order IX Rule 13 read with Section 151 of Civil Procedure Code, 1908, and that the words “*prevented by any sufficient cause from appearing*” must be liberally construed to enable the Court to do complete justice between the parties. He also contended that sufficient cause for non-appearance refers to the date on which absence was made a ground for proceeding *ex parte* and cannot be interpreted to rely upon other circumstances anterior in point of time, and previous negligence cannot be taken into account.

16. The counsel for petitioner placed reliance on the decision of the Supreme Court in **G.P. Srivatsava vs. R.K. Raizada and others**¹.

17. The counsel for respondent however supported the order passed by the Court below and sought to contend that in spite of several opportunities being given to petitioner in the suit, they were not availed of by petitioner. He also contended that no evidence of Jaundice suffered by petitioner was adduced and so the Court below was right in not condoning the delay of (85) days in filing the

¹ (2000) 3 S.C.C. 54

application to set aside the *ex parte* decree dt.31.10.2014; and that the only reason the Court below refused to condone the delay of (85) days in filing the application under Order IX Rule 13 read with Section 151 of Civil Procedure Code, 1908 was that no evidence of the illness of Jaundice suffered by petitioner had been adduced.

18. It is common knowledge that treatment for Jaundice would not always be through *Allopathy* medicine, and treatment by other means including *Ayurveda* would be taken by people who suffer from Jaundice, and the persons providing the treatment may not possess qualification of a Doctor.

19. Also, when the delay in approaching the Court seeking to set aside the *ex parte* decree is a short one, the Court below cannot refuse to condone the same merely on the ground that medical certificate in support of the illness was not filed.

20. In **G.P. Srivatsava** (1 supra), the Court observed as follows :

“7. Under Order 9, Rule 13, C.P.C. an *ex parte* decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any 'sufficient cause' from appearing when the suit was called on for hearing. Unless 'sufficient cause' is shown for non-appearance of the defendant in the case on the date of hearing, the Court has no power to set aside an *ex parte* decree. The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the Court to do complete justice between the parties particularly when no negligence or inaction is imputable to erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be

construed as elastic expression for which no hard and fast guidelines can be prescribed. The Courts have wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The 'sufficient cause' for non-appearance refers to the date on which the absence was made a ground for proceeding ex-parte and cannot be stretched to rely upon other circumstances anterior in time. If sufficient cause' is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where defendant approaches the Court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits."

21. Though the counsel for respondent sought to contend that several opportunities were given to petitioner which were not availed of by petitioner when the suit was pending, as held in the **G.P. Srivatsava** (1 supra), prior negligence of the party cannot be taken into account while considering an application under Order IX Rule 13 read with Section 151 of Civil Procedure Code, 1908.

22. For the aforesaid reasons, I hold that grave injustice has been caused to petitioner by denying him an opportunity to contest the suit on merits.

23. Accordingly, the Civil Revision Petition is allowed. The order dt.04.04.2018 passed in I.A.No.365 of 2015 in O.S.No.745 of 2010 on the file of IV Additional District Judge, Ranga Reddy District, at L.B. Nagar is set aside, and the said I.A. is allowed on payment of costs of

Rs.5,000/- to be paid by petitioner to respondent or deposited in the Court below within four (04) weeks from the date of receipt of copy of this order. If costs are deposited, the respondent is permitted to withdraw the same without furnishing any security.

24. In default of payment of such costs or deposit of such costs in the Court below, the Civil Revision Petition shall stand dismissed.

25. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 19.06.2019

Ndr/*

