

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.5164 of 2017

ORDER :

Heard the counsel for petitioners, and Sri Gaddam Srinivas, counsel for respondents.

2. This Civil Revision Petition is filed challenging the order dt.04.07.2017 passed in Civil Miscellaneous Appeal No.144 of 2015 on the file the XIV Additional District and Sessions Judge, Ranga Reddy District, at L.B. Nagar, confirming the order dt.04.04.2014 passed in Interlocutory Application No.242 of 2012 in Original Suit No.1329 of 2010 on the file of II Additional Senior Civil Judge, Ranga Reddy District, at Lal Bahadur Nagar, Hyderabad.

3. The petitioners herein are defendant nos.1 to 6 in the above suit.

4. The 1st respondent herein filed the said suit against petitioners and 4th respondent for perpetual injunction restraining petitioners from interfering with his possession and enjoyment of the suit schedule property.

5. After receipt of summons, petitioners engaged a counsel by name Sri Police Venkat Reddy and Sri M. Bheeshma Chary, Advocates, to defend them.

6. On the ground that no Written Statement was filed by petitioners, they were set *ex parte*, and an *ex parte* order was passed on 23.01.2012.

7. Within thirty (30) days from the said date, on 21.02.2012 itself petitioners filed I.A.No.242 of 2012 under Order IX Rule 13 of Civil Procedure Code, 1908 stating that the counsel engaged by them did not inform them about the suit proceedings; that they are not well-versed with legal proceedings; and so, they could not participate in the proceedings.

8. No counter-affidavit was filed by the 1st respondent to the said I.A.

9. On 04.04.2014, Interlocutory Application No.242 of 2012 was dismissed by the Trial Court stating that petitioners did not produce reliable evidence to show willful negligence on the part of counsel on record, and they did not explain reason why they did not approach the Court within the stipulated period of limitation. It held that petitioners themselves were negligent in proceeding with the matter.

10. Challenging the same, petitioners filed Civil Miscellaneous Appeal No.144 of 2015 in the Court of the XIV Additional District and Sessions Judge, Ranga Reddy District, at L.B. Nagar.

11. On 04.07.2017, the lower appellate court also dismissed the Civil Miscellaneous Appeal without even considering the reason assigned by petitioners for their non-appearance by observing that along with Interlocutory Application No.242 of 2012, petitioners did not file Written Statement, and they merely stated that they are ready to file Written Statement.

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

13. The counsel for petitioners contended that when the petitioners engaged counsel since they were not well-versed with the Court proceedings and since they were not advised that Written Statement ought to be filed within (30) days, they could not file Written Statement within the time stipulated; and when the petitioners filed the Interlocutory Application No.242 of 2012 under Order IX Rule 13 of Civil Procedure Code, 1908 within the time of (30) days prescribed under the Limitation Act, 1963, the Trial Court ought not to have dismissed it on the ground that petitioners did not file the said application within the stipulated period of limitation.

14. The counsel for petitioners also contended that the lower Appellate Court did not even go into the reason assigned for not filing Written Statement in the suit, and dismissed the appeal on the ground that petitioners were not ready to file Written Statement in the suit.

15. On the other hand, the counsel for respondents refuted the said contentions and contended that in spite of several opportunities being given, the petitioners did not avail them to file Written Statement and contest the suit; and therefore, they should be denied relief in the Revision.

16. I have noted the contentions of both sides.

17. It is an admitted fact that I.A.No.242 of 2012 filed under Order IX Rule 13 of Civil Procedure Code, 1908 was filed within thirty (30)

days of passing of the *ex parte decree* on 21.02.2012. Therefore, the Trial Court ought not to have stated that petitioners have filed it beyond the stipulated period of limitation, and they did not give reasons for doing so.

18. It is settled law that parties engage Advocate and rely on the Advocate to take care of their interests. If they are not properly advised by the Advocate and when they immediately approach the Court within the stipulated period of limitation, the Court cannot dismiss the said application on the ground that petitioners should prove willful negligence on the part of their earlier counsel on record.

19. The Supreme Court in **G.P. Srivastava vs. R.K. Raizada and others**¹ held that the term “*sufficient cause*” appearing in Order IX Rule 13 of Civil Procedure Code, 1908 refers to the sufficient cause for non-appearance on the date on which absence was held a ground for proceeding *ex parte* and cannot be stretched to rely upon other circumstances anterior in time; and if such sufficient cause is made out for non-appearance of defendant on the date fixed for hearing when *ex parte* proceedings were initiated against him, he cannot be penalized for his previous negligence which had been overlooked and thereby condoned earlier.

20. It further observed that 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

¹ (2000) 3 S.C.C. Pg.54

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 *lis* decided on merits. It further observed that 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.

21. In the instant case, neither the Trial Court or the lower Appellate Court had gone into the actual reason assigned by petitioners and decided whether they constitute “*sufficient cause*” or not. In circumstances where rustic villagers like petitioners engage a counsel to defend their interests in Courts, the discretion must be exercised in their favour.

22. In **Sunil Poddar and others vs. Union Bank of India**², cited by counsel for petitioners, the Supreme Court only considered whether non-service of summons can be taken as a ground for setting aside *ex parte decree*. But the said issue does not arise in the instant case.

23. Therefore, the decision in **Sunil Poddar** (2 supra) is distinguishable.

24. The lower Appellate Court also erred in stating that petitioners ought to have filed the Written Statement along with I.A.No.242 of 2012 when there is no such requirement in law.

² (2008) 2 S.C.C. 326

25. Accordingly, the Civil Revision Petition is allowed. The order dt.04.07.2017 passed in Civil Miscellaneous Appeal No.144 of 2015 on the file the XIV Additional District and Sessions Judge, Ranga Reddy District, at L.B. Nagar, and the order dt.04.04.2014 passed in Interlocutory Application No.242 of 2012 in Original Suit No.1329 of 2010 on the file of II Additional Senior Civil Judge, Ranga Reddy District, at Lal Bahadur Nagar, Hyderabad are both set aside; and the said Interlocutory Application No.242 of 2012 is allowed subject to petitioners paying costs of Rs.2,000/- to the 1st respondent or depositing the same within two (02) weeks from the date of receipt of copy of the order. The petitioners shall also file Written Statement in the suit within the said period of two (02) weeks without fail. In default of compliance of these conditions, the Civil Revision Petition shall stand dismissed.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 02.07.2019

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