

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.6427 of 2018

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.29-08-2018 in C.M.A.No.44 of 2018 of the III Additional Chief Judge, City Civil Court, Hyderabad confirming the order dt.09-08-2017 in I.A.No.590 of 2016 in O.S.No.125 of 2013 of the V Senior Civil Judge, City Civil Court, Hyderabad.

2. Petitioner herein is defendant in the suit.
3. The respondent/plaintiff filed the suit against petitioner for recovery of a sum of Rs.1,20,000/- with future interest @ 24% p.a. from the date of filing of the suit till realization and costs.
4. Petitioner was set *ex parte* by the said Court on the ground that in spite of service of summons from the Court, he did not choose to appear before the Court and file written statement opposing the claim of the respondent/plaintiff. Thereafter *ex parte* decree was passed on 05-10-2013 by the said Court decreeing the suit.
5. The respondent then filed E.P.No.76 of 2016 for execution of the decree of the trial Court to attach the moveable properties of the petitioner and to sell the same invoking order XXI Rules 64 and 65

C.P.C. Notice in the said E.P. was issued to the petitioner, which he received on 09-05-2016.

6. I.A.No.590 of 2016 was filed by petitioner on 01-06-2016 to condone the delay of 950 days in seeking to set aside the *ex parte* decree dt.05-10-2013.

7. In the said application, petitioner took a plea that he had no knowledge about the *ex parte* decree passed on 05-10-2013 in the suit till he received notice in E.P.No.76 of 2016 and therefore there is a delay of 950 days in filing petition under Order IX Rule 13 C.P.C. and the same is required to be condoned. He contended that respondent had managed to see that petitioner did not get any summons in the suit and petitioner ought to be given an opportunity to contest the suit on merits.

8. The respondent/Decree-holder filed counter opposing the said I.A. He alleged that petitioner did receive summons sent by the Court and therefore there is no necessity to condone the delay of 950 days in seeking to set aside the *ex parte* decree.

9. By order dt.09-08-2017, the trial Court dismissed I.A.No.590 of 2016. It held that the suit proceedings reveal that one V.Ramya, who is the daughter of petitioner, received the summons sent by the Court in the suit on 10-08-2013 and the Process Server gave sworn affidavit also to that effect. It observed that as per Order V Rule 15 C.P.C. the same amounts to sufficient service of summons on the petitioner

because under the said Rule, in case of absence of the defendant from his residence at the time when the service of summons was sought to be effected on him at his residence, the service may be made on any adult member of the family, whether male or female, who is residing with him. It observed that petitioner did not deny that V.Ramya, who received the summons, is not his daughter or the signature of the recipient appearing on the summons is not that of his daughter; and therefore the plea of the petitioner that he had no knowledge about the suit, cannot be accepted.

10. It therefore held that no sufficient cause was shown under Section 5 of the Limitation Act, 1963 to condone the delay in filing application under Order IX Rule 13 C.P.C. and that petitioner appears to have filed the said I.A. only to avoid the execution of the decree against him.

11. Challenging the same, petitioner filed C.M.A.No.44 of 2018.

12. In the CMA, petitioner contended that notice was received by one Ramulu, that he was not known to him; that summons were also not received by the petitioner; and the signature of petitioner's daughter Ramya was forged. He further contended that Ramya, who is petitioner's daughter, had no knowledge or receipt of the Court summons in O.S.No.125 of 2013. He filed the School Leaving Certificate of his daughter along with her signatures, which indicates that her signature does not tally with the signature on the Court

summons purporting to be belong to her. Before the lower appellate Court, a new contention was also raised by the petitioner that his daughter was a minor at the time when she received summons.

13. The lower appellate court observed that petitioner did not take any such pleading about his daughter being a minor at the time of service of summons in I.A.No.590 of 2016; and that the petitioner did not take any steps to see that the signature purporting to that of Ramya on the summons was actually forged, by seeking to have sent it for Expert opinion. It also held that no plea was taken in I.A.No.590/2016 that legal notice was not served on petitioner but on Ramulu, a stranger. It held that Ramya is the daughter of the petitioner and the report of the Process server states that she received the summons and it sufficient service under Order V Rule 15 CPC.

14. It therefore held that petitioner had knowledge of the decree before the issuing of show cause notice in E.P.No.76 of 2016 and the delay in filing application to set aside the *ex parte* decree was not properly explained and sufficient cause was not shown.

15. So by order dt.29-08-2018, the lower appellate Court rejected the said CMA.

16. Assailing the same, this Revision Petition is filed.

17. Learned counsel for petitioner contended that the summons in the suit were not actually received by him personally; that the signature of

his daughter on the summons was in fact forged; alternatively, he contended that she was a minor on the date when she received the summons; and that the statement of Processor Server was false.

18. It is important to note that no plea was taken by petitioner in I.A.No.590 of 2016 that the signature of his daughter was forged or that she was a minor when she actually received summons and such a plea was taken only for the first time in C.M.A. by the petitioner.

19. It is important to note that the School Leave Certificate of petitioner's daughter shows that she was born on 27-01-1992. The suit itself was filed in 2013 and the signature of petitioner's daughter was allegedly taken on 10-08-2013 on the summons in the suit. Therefore, by that date, she was already a major. Therefore, the plea that petitioner's daughter was a minor at the time when she allegedly received summons, is a false plea.

20. In I.A.No.590 of 2016, petitioner did not plead that his daughter was a minor or that her signature was forged. He cannot be permitted to take the said plea for the first time in C.M.A.No.44 of 2018 particularly when he did not file any application to refer the signature on the summons to a Handwriting Expert for his opinion.

21. The record of the trial Court shows that petitioner's daughter received summons and the Process Server also stated in his sworn statement that she did received the summons and as per Order V Rule 15 C.P.C., it is deemed service.

22. There is no sufficient cause shown by petitioner why he did not contest the suit after having received summons.

23. Therefore, I do not find any error of jurisdiction in the order passed by the Court below refusing to condone the delay of 950 days in seeking to set aside the *ex parte* order dt.05-10-2013 passed in O.S.No.125 of 2013 by the V Senior Civil Judge, City Civil Court, Hyderabad.

24. Accordingly, the Civil Revision Petition fails and is dismissed.
No costs.

25. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-03-2019
Vsv