

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.6440 of 2018

ORDER:

This Revision is filed challenging the order dt.01.10.2018 in I.A.No.1381 of 2017 in MVOP.No.1941 of 2015 of the III Additional Chief Judge, City Civil Court, Hyderabad.

2. Petitioner herein is the 2nd respondent in the above O.P.
3. The respondents 1 to 3 filed the said O.P. seeking compensation on account of the death of the husband of 1st respondent, who is also father of respondents 2 and 3, in an accident involving allegedly the vehicle of the petitioner-Society, which was driven by 4th respondent.
4. Summons in the O.P. was served on an employee of the petitioner-Society.
5. Since no counter was filed in the O.P. by the petitioner, it was set ex-parte on 08.03.2016 and thereafter an ex-parte decree was passed on 18.07.2016.
6. Subsequently, respondents 1 to 3 filed EP before the III Additional Chief Judge, City Civil Court Hyderabad, for execution of the *ex-parte* decree.
7. When summons in the E.P. were served on the petitioner, petitioner filed I.A.No.1381 of 2017 under Section 5 of the Limitation Act, 1963 to condone the delay of 367 days in seeking

to set aside the *ex-parte* decree dt.18.07.2016 and also another application under Order IX Rule 13 CPC to set aside the *ex-parte* decree.

8. In the affidavit filed in support of the said application it is admitted that summons were served on one of the employees of the petitioner, but due to oversight he did not bring it to the notice of the management of the petitioner-Society and that was why the petitioner did not contest the O.P. and challenge the *ex-parte* decree.

9. Counter affidavit was filed by respondents 1 to 3 opposing the said application. They stated that after the *ex-parte* decree was passed on 18.07.2016, respondents 1 to 3 got issued legal notice on 22.08.2016 by RPAD to the petitioner and to the 4th respondent and even after receipt of the same, petitioner and 4th respondent did not deposit the decretal amount. Therefore, petitioners filed E.P. on 29.08.2016 and the decree was transferred to the Court of District Judge, Ranga Reddy since the properties of the petitioner-Society were located in the territorial jurisdiction of the Ranga Reddy District. They also contended that there is no diligence on the part of the petitioner, which is an Educational Institution having good legal advise, and the application is filed only to harass them.

10. By order dt.01.10.2018, the Court below dismissed the said application. It observed that though the I.A.No.1381 of 2017 was

filed in July, 2017, petitioner did not represent the case till 14.09.2018, for more than one year, though the respondents 1 to 3 represented the case showing their readiness. It observed that the petitioner is an Institution and record indicates service of summons on the petitioner. It held that petitioner did not prosecute the case diligently and failed to avail the remedy, and so indulgence cannot be shown to the petitioner to condone the said period of delay.

11. Challenging the same, this Revision is filed.

12. Counsel for the petitioner contended that the petitioner had acted bonafidely but was a victim of circumstance, since the employee of the petitioner, ho received the summons, did not bring it to the notice of the management of the petitioner-Society and this constitutes sufficient cause for condoning the delay of 367 days in filing the application under Order IX Rule 13 CPC.

13. Counsel for the respondents 1 to 3 refuted the said contentions and pointed out that summons were duly served on the employee of the petitioner and the petitioner therefore cannot plead that it had suffered any prejudice.

14. It is important to note that second *proviso* to Order IX Rule 13 CPC states that no Court shall set aside a decree passes *ex-parte* merely on the ground that there has been an irregularity in service of summons, if it is satisfied that the defendant had

knowledge of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.

15. In ***Sunil Poddar & Ors v. Union Bank Of India***¹ the Supreme Court held that under the amended Code, the question is not whether the defendant is actually served with summons in accordance with the procedure laid down and in the manner prescribed in Order V of the Code, but whether he had notice of the date of hearing of the suit, and whether he had sufficient time to appear and answer the claim of the plaintiff. Once these two conditions are satisfied, an *ex parte* decree cannot be set aside even if it is established that there was irregularity in service of summons. If the Court is convinced that the defendant had otherwise knowledge of the proceedings and he could have appeared and answered the plaintiff's claim, he cannot put forward a ground of non-service of summons for setting aside *ex parte* decree passed against him by invoking Order IX Rule 13 CPC.

16. It is not the case of the petitioner that the employee, who received the summons, was not in their employment subsequent to the receipt of summons. The said employee has not even been examined as a witness in I.A. No.1381 of 2017 by the petitioner to say that it was his mistake in not informing receipt of summons to the petitioner's management which caused the passing of the *ex-parte* decree. The Court below has also recorded that the

¹ 2008(2) SCC 326

I.A.No.1381 of 2017 under Section 5 of the Limitation Act, though filed in 2017 was not argued by the petitioner till 14.09.2018, though the respondents 1 to 3 showed their readiness.

17. Counsel for the respondents 1 to 3 has placed before me the legal notice dt.22.08.2016 got issued by respondents 1 to 3 to the petitioner as well as 4th respondent, immediately after the *ex-parte* decree was passed, and also postal receipts of the postal covers in which the said legal notice was set.

18. Though these documents were also denied by the petitioner, the presumption in law is that notices addressed to the registered Postal Address of the petitioner would have been served on the petitioner; and if the petitioner had received the said notice some time in September, 2016, why the petitioner waited till July, 2017 to file the I.A., has to be explained by the petitioner, but it failed to do so.

19. This being a Motor Accidents case, respondents 1 to 3 would be naturally anxious to get compensation, while the petitioner from the above conduct appears to be intent of dragging on the matter indefinitely, and this conduct of the petitioner cannot be said to be *bonafide*.

20. Though counsel for the petitioner cited the decision in ***M.K.Prasad v. P.Arumugam***² wherein the Supreme Court advocated mere liberal approach to the condonation of delay in

² AIR 2001 SC 2497

applications to set aside the *ex-parte* decree provided costs are awarded to compensate the other party, the conduct of the petitioner in the instant case does not warrant any such indulgence.

21. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

22. Accordingly, this Civil Revision Petition fails and it is dismissed. No order as to costs.

23. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

02nd July, 2019.

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