

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY
CIVIL REVISION PETITION NO.2571 OF 2012

ORDER:

This Civil Revision Petition is filed assailing the orders dated 19.03.2012 in I.A.No.197 of 2011 in O.S.No.948 of 2009 on the file of learned II Additional Junior Civil Judge at Warangal.

2. This application in I.A.No.197 of 2011 was filed under Section 5 of Limitation Act to condone the delay of 187 days in filing an application under Order 9, Rule 13 of Civil Procedure Code (for short 'CPC') to set aside the ex-parte decree dated 23.07.2010.

3. The trial Court, after detailed enquiry, dismissed the said application holding that the petitioner has failed to explain the delay of 187 days. The trial Court has also extracted the docket proceedings in the order impugned stating that the defendant appeared on 03.11.2009, did not chose to file written statement till 11.02.2010 and that on 11.02.2010 he was set ex-parte and on 09.03.2010 he has filed an application under Order 9, Rule 7 of CPC and the same was allowed on condition to

file the written statement and subject to payment of cost of Rs.100/- but the petitioner did not chose to file written statement and did not chose to pay the cost of Rs.100/-, as ordered in I.A.No.530 of 2010 under Order 9, Rule 7 of CPC. Accordingly, the ex-parte decree was passed on 23.07.2010. With these observations the trial Court has held that delay is not properly explained.

4. Feeling aggrieved by the said orders dated 19.03.2010 the present CRP is filed alleging that the Court below failed to appreciate the facts and adopted a pedantic approach, in-fact, the petitioner is willing to contest the matter, he is the only son of his father, suffered from paralysis, the respondents/plaintiffs are land grabbers, they are trying to grab his property and it is essential to decide the original suit on merits.

5. Heard the learned counsel on both sides. The submissions made on either side have received due consideration of this Court.

6. Learned counsel for the petitioner would submit that the defendant has got every right to file written

statement and mere fact that the written statement was not filed within the stipulated time, it does not debar the defendant from contesting the suit at a later stage and relied on the principles laid in the following decisions:

- (i) **Kailash Vs. Nanhku and others¹.**
- (ii) **Salem Advocate Bar Association, Tamilnadu Vs.Union of India².**

7. Per contra, learned counsel for the respondents /plaintiffs would submit that the trial Court is justified in dismissing the application as the delay is not properly explained, the defendant has failed to file the written statement within the stipulated time and when the ex-parte order was set-aside subject to payment of costs of Rs.100/- and filing of written statement, the defendant did not chose to file the written statement or to pay the cost of Rs.100/- and allowed the suit to be decreed in ex-parte and thereafter, conveniently filed this application under Section 5 of Limitation Act to condone the delay of 187 days and that there are no merits in the application.

¹ (2005) 4 Supreme Court Cases 480

² (2005) 6 Supreme Court Cases 344

8. Perused the principles laid in the above decisions. It is true both the decisions relied by learned counsel for the petitioner are only in respect of the principles laid for filing and accepting the written statement even after the statutory period fixed under Order 8, Rule 1 of CPC. There cannot be any doubt as to the principles laid in the above decisions. But in the case on hand, the fact remains is that a reasonable opportunity was given to the petitioner/defendant to file the written statement till 11.02.2010 and that on 11.02.2010 since there was no representation and written statement was not filed, he was set ex-parte and thereafter the petitioner herein has filed I.A.No.530 of 2010 under Order 9, Rule 7 of CPC to set aside the ex-parte order dated 11.02.2010 and it was allowed on 09.03.2010 permitting the defendant to file written statement subject to payment of Rs.100/- costs. But again the defendant has failed to comply with both the conditions and that he has failed to pay the cost of Rs.100/- and also failed to file written statement as directed in I.A.No.530 of 2010. Consequently the defendant has allowed the suit to be decreed in ex-parte on

23.07.2010. Thereafter, the present application is filed on 01.03.2011 to condone the delay of 187 days in filing an application to set aside the ex-parte decree dated 23.07.2010.

9. I have carefully perused the averments of the supporting affidavit. In paragraph No.3 it is only mentioned that the plaintiffs have misrepresented the Court and obtained ex-parte police aid against him and that he has a good case to succeed and that the delay is not at all intentional.

10. Be it stated that it is not the case of the petitioner/defendant that he was not given reasonable opportunity to resist the suit of the plaintiffs, filed for perpetual injunction. But in-spite of granting ample opportunity, as stated above, he has failed to file the written statement for 90 days and thereafter he was set ex-parte, then he has filed I.A.No.530 of 2010 under Order 9, Rule 7 of CPC, which was allowed conditionally on 09.03.2010 subject to payment of Rs.100/- costs and filing of written statement but both the conditions were not complied and the ex-parte decree was passed on

23.07.2010. It is only on 01.03.2011 he filed application in I.A.No.197 of 2011 to condone the delay of 187 days.

11. In this context, I may refer to the principles laid down by the Hon'ble Supreme Court in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others**³ wherein the Apex Court, while interpreting the provisions of Section 5 of Limitation Act regarding condonation of delay, has summarized the principles. The law consistently laid down by the Apex Court says that the word 'sufficient cause' must be construed liberally to meet the ends of justice without adopting pedantic approach. But the exception to this test to be applied is whether the petitioner made out a sufficient cause or not? Thus, in each and every case the Court has to examine the circumstances and if the Court is satisfied that the cause shown by the petitioner is beyond his control, then such cause has to be accepted as sufficient cause, which prevented the petitioner from appearing before the Court on specified date. If the Court finds that the petitioner is negligent and deliberately

³ 2013(12) SCC 649

protracting the proceedings for one reason or the other, such person is disentitled to claim the benefit of Section 5 of the Limitation Act.

12. When the facts of the case on hand are tested on the touchstone of principles laid in **Esha Bhattacharjee** case (3rd supra), in my considered opinion, the petitioner did not place any cogent material either before this Court or before the trial Court giving satisfactory explanation for condoning the delay in filing an application under Order 9, Rule 13 of CPC.

13. On overall consideration of the entire material available on record, it appears that the petitioner/defendant designedly tried to protract the proceedings to the sufficient length of time and deliberately failed to file the written statement initially and again when the orders in I.A.No.530 of 2010 were passed under Order 9, Rule 7 of CPC and allowed the passing of ex-parte decree on 23.07.2010. He has also failed to pay the costs as imposed by the trial Court vide orders in I.A.No.530 of 2010, as a result, the trial Court has recorded the evidence of

plaintiffs and passed an ex-parte decree on 23.07.2010, whereas, the present application was filed only on 01.03.2011 to condone the delay of 187 days, which was dismissed on 19.03.2012. A valuable right is accrued in favour of the respondents/plaintiffs by efflux of time and such a right cannot be easily disturbed as such lack of bonafides is imputable to the petitioner.

14. In the aforesaid facts and circumstances of the case, I do not find any merit in this Civil Revision Petition and the order impugned does not warrant any interference by this Court and it is sustained.

15. In the result, this Civil Revision Petition is dismissed as devoid of merits confirming the orders dated 19.03.2012 in I.A.No.197 of 2011 in O.S.No.948 of 2009 on the file of learned II Additional Junior Civil Judge at Warangal. In the circumstances of the case, there shall be no order as to the costs. Miscellaneous applications, if any pending, shall stands closed.

A.VENKATESWHARA REDDY, J

09-11-2022

Abb