

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CIVIL REVISION PETITION No.5977 of 2016

ORDER:

Heard Sri K.Amarnath Reddy, learned counsel appearing for the revision petitioners as well as Sri K.Harish Kumar, learned counsel appearing for the respondent.

2. Challenge in this Civil Revision Petition is the order that is rendered by the Court of Principal Senior Civil Judge, Range Reddy District, in I.A.No.1259 of 2015 in O.S.No.1384 of 2014, dated 09.9.2016.

3. The revision petitioners, who are the defendants to the suit, filed an application under Section 5 of the Limitation Act seeking the Court to condone the delay of 297 days in filing an application to set aside the *ex parte* decree dated 31.3.2015. The said application stood dismissed on 09.9.2016. Aggrieved by the same, the revision petitioners are before this Court.

4. Learned counsel for the revision petitioners submits that a suit was filed by the respondent/plaintiff for recovery of money and that, in the said suit, summons were not received by the revision petitioners and the suit was decreed *ex parte*. Subsequently, the revision petitioners came to know that a decree was passed against them and immediately, they obtained certified copies of the judgment and decree and filed an application to set aside the *ex parte* decree duly mentioning that as they failed to receive the summons, they failed to make their appearance, but the trial Court without entertaining the said ground dismissed the application. Aggrieved by the same, the revision petitioners approached this Court for redressal.

5. Learned counsel for the revision petitioners further brought to the notice of this Court the report of the Process server regarding the service of summons through Court. A perusal of the said report reveals that

the Process server enquired in the given address but could not trace the same and therefore, he failed to serve the summons on the revision petitioners. Learned counsel further submitted that on the ground that summons that were sent through post have been served on the revision petitioners, the trial Court had set them *ex parte* in the said suit. But, the postal acknowledgment does not contain either the seal or signature of the staff concerned of the postal department. Learned counsel for the respondent admits that the postal acknowledgment card neither contains the seal of the postal department nor the signature of the staff concerned. However, the learned counsel for the respondent submits that summons were served to the address mentioned by the revision petitioners in the promissory note.

6. In reply to the said submission, the learned counsel for the revision petitioners states that a legal notice was issued to the revision petitioners prior to

filing of the suit and the said notice was returned unserved by the postal department making an endorsement that no such person was found in the given address, but the suit was filed giving the same address particulars.

7. A perusal of copy of the postal acknowledgment card reveals justification in the said submission of the learned counsel for the revision petitioners. Thus, the reason shown for non-appearance of the revision petitioners before the trial Court appears justifiable. However, the trial Court failed to consider the same and disallowed the application. As sufficient cause was projected for non-appearance of the revision petitioners before the trial Court, this Court is of the view that the impugned order is unsustainable.

8. Every party has got a right to project his or her contentions so that the litigation can be put to an end through comprehensive disposal of the suit. No party should be denied his justifiable opportunity of putting

forth his claim or defence, as the case may be. Thus, having regard to the same, this Court considers it desirable to allow the Revision Petition by setting aside the impugned order.

9. Resultantly, the Civil Revision Petition is allowed. The order rendered by the Court of Principal Senior Civil Judge, Range Reddy District, in I.A.No.1259 of 2015 in O.S.No.1384 of 2014, dated 09.9.2016 is set aside. Consequently, the delay of 297 days in filing an application to set aside the *ex parte* decree dated 31.3.2015 is condoned.

10. As a sequel, pending miscellaneous applications, if any, shall stand disposed of.

Dr. JUSTICE CHILLAKUR SUMALATHA

25.4.2022
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