2023:APHC:11592

HIGH COURT OF ANDHRA PRADESH

TUESDAY ,THE EIGHTEENTH DAY OF APRIL

TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR

CIVIL MISCELLANEOUS APPEAL NO: 439 OF 2022

Between:

1. BEEDELLI SUJATHA W/o.Late Venugopal @ Yakob, aged about 50 years, R/o.D.No.18-2-62/5, Chinamamidipalli, 29th Ward, Narsapur, West Godavari District. -
2. Beedelli (Dasari) Umamaheswari W/o.John Kumar, aged about 27 years, R/o.D.No.18-2-62/5, Chinamamidipalli, 29th Ward, Narsapur, West Godavari District.
3. Beedelli Srinivasa Chakravarthi S/o.Late Venugopal @ Yakob, aged about 26 years, R/o.D.No.18-2-62/5, Chinamamidipalli, 29th Ward, Narsapur, West Godavari District.
4. Beedelli Ravalika D/o.Late Venugopal @ Yakob, aged about 22 years, R/o.D.No.18-2-62/5, Chinamamidipalli, 29th Ward, Narsapur, West Godavari District.

...PETITIONER(S)

AND:

1. GUNISETTY PEDDINTLU(STYLING HERSELF AS BIDILLI PEDDINTLU W/o.Venugopal @ Yakob), W/o. not known, aged 54 years, R/o.D.No.18-2-62/5, Chinamamidipalli, 29th Ward, Narsapur, West Godavari District.
5. Gunisetty Sirisha Rani (Styling herself as Bidilli Sirisha Rani D/o.Venugopal @ Yakob), D/o. not known, aged 21 years, R/o.D.No.18-2-62/5, Chinamamidipalli, 29th Ward, Narsapur, West Godavari District.
6. Gunisetty Sarvani (Styling herself as Bidilli Sarvani D/o.Venugopal @ Yakob), D/o. not known, aged 22 years, R/o.D.No.18-2-62/5, Chinamamidipalli, 29th Ward, Narsapur, West Godavari District.

...RESPONDENTS

Counsel for the Petitioner(s): SAI GANGADHAR CHAMARTY

Counsel for the Respondents: SARASCHANDRA BABU JAKKAMSETTY

The Court made the following: ORDER

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

CIVIL MISCELLANEOUS APPEAL No.439 of 2022

JUDGMENT:

Defendants in a suit failed to convince the trial Court about their cause of absence leading to an ex-parte decree suffered an adverse order in I.A.No.180 of 2022 in O.S.No.31 of 2014 in the Court of learned X Additional District Judge, Narsapur, have come to this Court under Order XLIII Rule 1(d) C.P.C. assailing the correctness of the order.

2. The respondents herein in this appeal are the plaintiffs before the trial Court.

3. Heard arguments of learned counsel on both sides.

4. Perused the record.

5. The following points emerged for consideration:

"1) Whether these appellants disclosed "sufficient cause" that prevented them from attending the hearing before the Trial Court?

2) Whether the impugned Order suffers from errors of facts of law?"

Points:

6. O.S.No.31 of 2014 was a suit filed by three plaintiffs as against four defendants before the learned X Additional District Judge, Narsapur. In the said suit, the plaintiffs prayed for

declaration that plaintiff Nos.2 and 3 are the owners of plaint schedule property and they also sought for recovery of possession of northern portion of the 1st floor of the building mentioned in the schedule and they further claimed damages and also sought for permanent injunction restraining the defendants from interfering with possession and enjoyment of the plaintiffs over the suit schedule property. Defendants received summons, engaged their counsel and made their appearance in this suit. For quite some time, the suit was adjourned for receiving the written statement from the defendants but finally as they failed to file the written statement, the learned trial Court set them *ex-parte* on **"23.04.2015".**

7. Thereafter it was on **"21.08.2017"**, the defendants moved an application under Order IX Rule 7 C.P.C. requesting learned trial Court to set aside the *ex-parte* order and receive their written statement. On certain office objections, the said application as well as the written statement were returned with the direction to represent after rectifying the objections. Subsequently, the defendants represented the said application along with written statement but they were once again returned

on **"04.01.2018"** questioning the correctness of the application. It is to be stated that thereafter no such application was filed by the defendants and they did not choose to put in a written statement. Subsequent thereto the suit preceded *ex-parte*, learned trial Court went on to adjourn the hearing from one date to other date and recorded the evidence of PWs.1 to 4 and the plaintiffs got exhibited Exs.A1 to A19. During all those dates of hearing, the defendants or their counsel did not participate. After hearing the arguments of learned counsel for plaintiffs and on considering the oral and documentary evidence, the learned trial Court decreed the suit in favour of the plaintiffs and the judgment and decree were passed on 27.03.2019. Thereafter, as defendants failed to comply with decree mentioned directions, the plaintiffs filed E.P.No.490 of 2019 before the executing Court and in execution the decree holders sought for delivery of property. When the Court officers went to execute the warrant, the defendants/J.drs refused to deliver the property. Defendants claimed that it was only when the Court officer had come to the property, they came to know that an *ex-parte* judgment was delivered against them and therefore seeking to set aside that *ex-parte* decree, they filed I.A.No.180 of 2022

under Order IX Rule 13 C.P.C before the trial Court. They moved EA.No.585 of 2019 before the executing Court seeking stay of the execution proceedings and after due hearing the learned executing Court stayed the proceedings. Subsequently in the application for setting aside ex-parte decree in I.A.No.180 of 2022, it received the counters from the plaintiffs and after due hearing, by the impugned order, it dismissed the petition. It is against that order the present Civil Miscellaneous Appeal came to be filed.

8. Before adverting to the analysis of facts on record, it is relevant to notice **"Order IX Rule 13 C.P.C."**

> *"13. Setting aside decree ex-parte against defendant:-*
>
> *In any case in which a decree is passed ex-parte against a defendant, he may apply to the Court by which the decree was passed for an Order to set it aside; and if he satisfies the Court that the summons was not duly served, or that* ***he was prevented by any sufficient cause from appearing when the suit was called on for hearing****, the Court shall make an Order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:*
>
> *Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendant also:*
>
> *Provided further that no Court shall set aside a decree passed ex-parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of*

hearing and had sufficient time to appear and answer the plaintiff's claim

Explanation: Where there has been an appeal against a decree passed ex-parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule of setting aside the ex-parte decree.

9. One could see that an *ex-parte* decree could be set aside if

1.The defendants were not served with summons.

2.Summons were served but, on the day when the suit was called on for hearing they could not appear before the Court on the date of hearing because of facts that prevented them from attending the Court. If those facts furnish proper reason to the Court, then it is called sufficient cause.

10. It is on those two grounds an *ex-parte* decree could be set aside. In the case at hand even by their own showing the defendants/these appellants were duly served with summons and they made their appearance in the Court. Therefore, that part of the provision has no application to this case. The case of these appellants was argued on the ground that they had

sufficient cause for their failure to appear on the adjourned date of hearing.

11. It is also relevant to notice the ratio laid down by the Hon'ble Supreme Court of India in **G.P.Srivastava Vs. R.K. Raizada**[1]

> "*7. Under Order 9 Rule 13 CPC an ex-parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any "sufficient cause" from appearing when the suit was called on for hearing. Unless "sufficient cause" is shown for non-appearance of the defendant in the case on the date of hearing, the court has no power to set aside an ex-parte decree. 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 particularly when no negligence or inaction is imputable to the erring party. Sufficient cause for the purpose of* ***Order 9 Rule 13*** *has to be construed as an elastic expression for which no hard and fast guidelines can be prescribed. The courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The "sufficient cause" for non-appearance refers to the date on which the absence was made a ground for proceeding ex-parte and cannot be stretched to rely upon other circumstances anterior in time. If "sufficient cause" is made out for non-appearance of the defendant on the date fixed for hearing when ex-parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case*

[1] (2000) 3 SCC 54

> *where the defendant approaches the court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence 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 the lis decided on merits*."

12. Explaining about "**sufficient cause"**, the Hon'ble Supreme Court of India in **Parimal Vs. Veena[2]** held that **"sufficient cause"** means that party had not acted in a negligent manner or there was a want of ***bona fide*** on its part. In view of the facts and circumstance of the case, the party cannot be alleged to have been not acting diligently or "**remaining inactive".**

13. Thus, it is in the above referred circumstances, a second opportunity has been given to the litigant to permit it to fight out the litigation on merits. In the case at hand defendants suffered the *ex-parte* decree and they sought it to be set aside.

14. The 1st appellant/1st petitioner/1st defendant swore an affidavit for herself and on behalf of the rest of the defendants/appellants. This affidavit mentioned the filing of the suit and their appearance before the Court and their failure to

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[2] (2011) 3 SCC 545

file the written statement and thereafter their efforts to file written statement and applications being returned etc. facts. Then it is stated that till the day Court officers came to effect delivery of property in the execution proceedings, these appellants were under the impression that the suit was still pending. These are the crucial facts that govern this present case. The affidavit further narrates that there are no willful laches on their part and since they were thinking that the suit was still pending, they did not meet their advocate. Then it is only after Court officer came, they met their advocate and then they have come up with an application to set aside *ex-parte* decree. It is further stated that the *ex-parte* decree was made on 27.03.2019 and the application under Order IX Rule 13 C.P.C. was supposed to be filed within 30 days which means on or before 26.04.2019 but they could not do it and in the process, there was 206 days delay and the cause for condonation of delay and the cause of setting aside *ex-parte* are one and the same and therefore they were moving single application to condone the delay and to set aside ex-parte decree.

15. As against these, plaintiffs filed a counter questioning the correctness of the averments made in the application and the affidavit and stated that these defendants had full knowledge of the date of decree and about factum of passing of *ex-parte* decree and they did not furnish any valid reasons for huge delay that occasioned in moving the application and that this application is vexatious and not maintainable.

16. Learned trial Court elaborately considered these submissions and copiously recorded the precedents cited before it and held that these defendants/appellants had full knowledge of litigation about the pendency of the suit, about the passing of the *ex-parte* decree and they kept quite all the while and they failed to show any sufficient cause to set aside the *ex-parte* decree. Finally, it dismissed that application.

17. In this Civil Miscellaneous Appeal, learned counsel for appellants urged that valuable rights over immovable property are in question and these appellants deserve an opportunity to contest the suit on merits and their pursuit of law is *bona fide* as could be gathered from their earlier efforts in presenting the written statement through an application under Order IX Rule 7

C.P.C. and the learned trial Court instead of being generous in these type of cases, erroneously dismissed the application.

18. As against this, learned counsel for respondents/plaintiffs submitted that it was a suit that commenced in the year 2014 and even after 9 years there is no quietus. It is further argued that appellants absolutely failed to show sufficient cause for absence at the dates of hearing and therefore the order of the trial Court is right on facts and law and does not require any interference.

19. Having considered these rival submissions and having considered the material on record, this Court had to state the following:

The application filed by these appellants before the learned trial Court in seeking to set aside the *ex-parte* decree fails to furnish all data that is relevant to consider such an application. The suit commenced in the year 2014 and they made their appearance and thereafter as they failed to file the written statement, the trial Court decided to proceed *ex-parte* and set the defendants/appellants *ex-parte* on 23.04.2015. Thus, it was from that day *ex-parte* proceedings commenced.

The suit was not disposed of on that day or on the next date. It was subsequently on several occasions, the suit was called on for hearing and during all those days 4 witnesses were examined and several documents were collected during trial. The application to set aside *ex-parte* decree does not mention what was the next date of hearing subsequent to the date of their setting *ex-parte* and it did not furnish any information as to what prevented them from attending the Court on any of those subsequent days of hearing.

20. On the other hand, their affidavit indicates that during the year 2017 and 2018, they put some effort in having the earlier *ex-parte* order set aside and file their written statement. From 04.01.2018, on which day their application to set aside *ex-parte* order and receive the written statement was returned, the petition of the appellants fail to mention any fact disclosing the efforts of these appellants in attending the Court or the efforts of their counsel in attending the Court. On the other hand, they say that they have always been under the impression that the suit has been pending and they realized that the judgment was rendered *ex-parte* only when the execution proceedings were initiated. These averments in the affidavit make it crystal clear

that these appellants as defendants though were eligible to appear for contesting the matter from 23.04.2015 onwards till the decree was passed on 27.03.2019, they did not choose to participate in the legal process. No causes are furnished for their failure to attend on various days of hearing. Order IX Rule 13 C.P.C. mandates that these defendants/appellants shall furnish a cause which prevented them from participating in the trial process. About that period the application is totally silent. Therefore, there was no cause shown to set aside the *ex-parte* decree in terms of Order IX Rule 13 C.P.C.

21. Added to the above they had come to Court with 206 days delay. The affidavit is silent as to when the Court officer met them and thereby notifying to them about the execution of the decree for delivering of possession. Thus, on relevant facts the affidavit furnishes no clue. The affidavit filed in support of the petition indicates that these appellants have not chosen to meet their lawyer since the suit was thought to be pending. Thus, they voluntarily and consciously "**remained inactive"**. Being "**remaining inactive"** is sufficient cause to dismiss the application as per the ratio of the Hon'ble Supreme Court of India referred above as per **Parimal'**s case (supra 2)**.** As could

be seen from the impugned order of the learned trial Court, these appellants with full knowledge allowed the time to elapse and they did not furnish any cause for their delayed approach to the Court. That observation is correct on facts.

22. In the above referred circumstances, it is to record that these appellants had completely failed to furnish any fact that prevented them from appearing before the trial Court on the appointed dates of hearing and they failed to furnish sufficient cause for their absence and they also failed to show any sufficient cause for 206 days delay in moving the application before the trial Court. The order of the trial Court is in accordance with law and facts available on record. Therefore, no interference is called for. Both points are answered against the appellants.

23. In the result, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dr. V.R.K.KRUPA SAGAR, J

Date: 18.04.2023
DVS

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

CIVIL MISCELLANEOUS APPEAL No. 439of 2022

Date: 18.04.2023

DVS