

*** THE HON'BLE SRI JUSTICE S. RAVI KUMAR**

+ CIVIL MISCELLANIOUS APPEAL No.130 of 2015

%24.03.2015

G.V. Purushotwam

....Appellant.

Vs.

\$ Sri Kasi Visweswara Swamy Temple,

Rep by its Manager L. Satyavathi

W/o.B. Srinivasa Raju

Hanuman Street, Satyanarayanapuram,

Vijayawada and another.

.....Respondents.

! Counsel for the Petitioner: Sri K.V. Satyanarayana

Counsel for Respondents: M/s.W.B. Srinivas

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>Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANIOUS APPEAL No.130 of 2015

Between:

G.V. Purushotwam

... Appellant.

AND

Sri Kasi Visweswara Swamy Temple,

Rep by its Manager L. Satyavathi

W/o.B. Srinivasa Raju

Hanuman Street, Satyanarayanapuram,
Vijayawada and another.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANIOUS APPEAL No.130 of 2015

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JUDGMENT:

This appeal is preferred challenging order dated 16-02-2010 in O.A.No.130/2009 on the file of Deputy Commissioner, Endowments Department, Kakinada.

2. Appellant herein is respondent in O.A.No.130/2009, which is an application filed under Section 83 of Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (hereinafter referred to "Act, 1987") and Deputy Commissioner of Endowments directed the petitioner herein to remove the encroachment made by him over the petition schedule property, within 30 days from the date of receipt of the order, failing which, he directed the Assistant Commissioner Endowments Department, Vijayawada to implement the orders under Section 84 of Act, 1987, if necessary, by taking police assistance.

3. Brief facts and dates that are relevant for the purpose of deciding

this matter are as follows:-

Petitioner herein preferred Revision Petition No.4/2010 before Regional Joint Commissioner, Kakinada challenging the very same order dated 16-02-2010 and the Regional Joint Commissioner, Kakinada disposed of the revision by remitting the matter to the lower Court i.e., Deputy Commissioner of Endowments, Kakinada and on such remand, the Deputy Commissioner of Endowments, Kakinada passed orders dated 05-06-2010. First respondent challenged these two orders i.e., order of the Regional Joint Commissioner, Kakinada dated 24-02-2010 and orders of the Deputy Commissioner, Kakinada, dated 05-06-2010 by preferring Writ Petition before this Court in W.P.No.19640/2010 and this Court, by an order dated 07-11-2014, allowed the writ petition, by setting aside the orders dated 24-02-2010 & 05-06-2010, giving liberty to appellant herein to challenge the eviction order dated 16-02-2010 by way of appeal with a delay condonation petition as per provisions of the Act and directed the respondents herein not to take any coercive action for a period of three months. Challenging the writ orders, the appellant herein preferred Writ Appeal No.89/2015 and a Division Bench of this Court, by an order, dated 12-02-2015, disposed of the writ appeal giving liberty to the appellant herein to prefer appeal by granting one month more time to the time granted by the learned Single Judge in the writ petition. After disposal of the writ appeal, present appeal is preferred.

4. Now the contention of the Advocate for appellant is that the writ appeal order dated 10-02-2015 and one month time granted by the Division Bench expires by 09-03-2015, but this appeal is preferred on 04-03-2015 and therefore, the same is within time. He submitted that for computation of limitation, the date of order of the Division Bench has to be taken into consideration and to support his argument, he

placed reliance on the judgment of the Madras High Court decided in **Peer Ammal vs. N.S. Nallusami Pillai**, wherein the Madras High Court observed as follows:-

“Where a preliminary decree on a mortgage is passed ex-parte and on an application made by the defendant to set it aside, the Court sets it aside and the plaintiff thereupon appeals to the High Court as a result of which the decree is restored, the time of filing an appeal, which is governed by Art.158, runs not from the date of the original decree but from the date of the order of restoration of that decree by the High Court.”

5. On the other hand, Advocate for respondents contended that in the writ petition, liberty was given to the appellant to prefer appeal with a delay condonation petition and three months time was granted to respondents herein not to take any coercive steps and that the leave granted by Single Judge in the writ petition was extended by one month by the Division Bench, but the appellant has filed the appeal without any delay condonation petition.

He further submitted that even according to proviso of Section 84 (2) of Act, 1987, appeal has to be preferred with 90 days from the date of receipt of the order under Section 83 (4) of Act, 1987 and there was no provision for extension of period of limitation for preferring the appeal in the statute, therefore, the appeal as filed is barred by time.

6. Now the point that would arise for my consideration in this appeal is whether present appeal is preferred within time?

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7. **Point:-**As already referred above, the Deputy Commissioner of Endowments passed eviction order on 16-02-2010 and there is no dispute that the order is passed under provisions of Section 83 of Act, 1987. It is also not in dispute that a remedy is provided under Section 84 of the Act, 1987, for challenging the orders passed under Section 83 of Act. According to submissions of both sides, earlier remedy to challenge orders under Section 83 of

Act, 1987 is to file a suit, but after the amendment, remedy is to prefer appeal before this Court. Learned counsel for respondents has drawn my attention to order dated 27-03-2010, wherein the appellant herein filed I.A.No.230/2010 in O.A.No.130/2009 contending that the order dated 16-02-2010 is on *ex-parte* order and the Deputy Commissioner of Endowments dismissed the said application holding that the orders were not an *ex-parte* basis, but it is on merits based on documentary evidence.

8. This Court, in the writ petition, while holding that the orders dated 22-04-2010 & 05-06-2010 are without jurisdiction and null and void and nonest in the eye of law, gave liberty to appellant herein to challenge the original eviction order by filing an appeal with a delay condonation petition. The relevant portion of the orders of the learned Single Judge in Writ Petition No.19640/2010, reads as follows:-

“After such remand, the Deputy Commissioner of Endowments passed an order dated 05.06.2010 dismissing the OA.No.130/09. The Endowments Tribunal started functioning, as stated above, from 24.05.2010. As per the law laid down in the above referred judgments, from the date on which the Tribunal started functioning, the Deputy Commissioner of Endowments lost his jurisdiction to discharge his functions under Section 83 of the Act. Therefore, the order passed by the Deputy Commissioner on 05.06.2010 is null and void and no nest in the eye of law and completely bereft of any validity besides being ultra vires and totally one without jurisdiction.

*The order passed by the Regional Joint Commissioner, ordering remand of O.A.130/2009 is also one without jurisdiction having regard to the language employed under Section 92 of the Act. At the same time, the third respondent herein cannot be made remediless and there should be no vacuum and the provisions of law are required to be interpreted in harmonious and meaning manner and there should not be any room for ambiguity. This Court has absolutely no scintilla of hesitation to hold that the remedy open for the third respondent against the orders of the Deputy Commissioner of Endowments(now substituted by the Tribunal) passed during the interregnum is appeal to this Court under Section 84 (2) of the Act as per the principle laid down by this Court in the case of the **THE EXECUTIVE OFFICER, GROUP TEMPLES** (supra 8). It is a settled*

and well established proposition of law that there is no waiver nor estoppel against law , as such, the contention sought to be canvassed contra by the third respondent is untenable. In view of this adjudication on the point of jurisdiction only, this Court does not propose to delve into other merits and demerits of the case and all the contentions, touching the same can be agitated by the parties before an appropriate forum of law.

For the aforesaid reasons, the writ petition is allowed and the impugned order dated 22.04.2010 in R.P.No.4/2010 passed by the Regional Joint Commissioner of Endowments, Endowments Department, Kakinada-1st respondent and the order 5.6.2010 passed by the Deputy Commissioner of Endowments, Kakinada-2nd respondent are set aside, giving liberty to the third respondent to file appeal against the initial order of eviction dated 16.2.2010 passed by the Deputy Commissioner of Endowments, Endowments Department, Kakinada, in O.A.No.130/2009 before this Court with a condone delay application. There shall be no coercive action for a

period of three months from today against the third respondent. Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.”

9. Learned counsel for the appellant mainly contended that as per the orders of the Division Bench in Writ Appeal, the appellant has got one month time to prefer appeal from the date of the order of the Division Bench. I feel it necessary to refer to the order of the Division Bench in order to consider the submission of the Advocate for appellant, which reads as follows:-

“This appeal is admitted and is being heard out today itself. After hearing the learned counsel for the parties we are of the view that the judgment of the learned Trial Judge has not really affected the appellant at all. We fail to understand why the appellant has preferred this appeal. We do not interfere with the same, however time granted by the learned Trial Judge to enable appellant to prefer appeal is extended for a period of one month more. We make it clear that the observations and the findings, if any, recorded by the learned Trial Judge with regard to the merit of the appeal, which is proposed to be preferred before the statutory authority, will not be a

binding factor.

All points are kept open and the interested parties will be free to agitate the same before the appropriate authority. Obviously, the said authority shall pass a speaking order.”

10. If the orders of the Single Judge and orders of the Division Bench are read together, in my view, the time granted by the Single Judge to prefer the appeal with a delay condonation petition is extended by one month by the Hon'ble Division Bench, but not as contended by the appellant that he can file the appeal within one month from the date of the order of the Division Bench, without a delay condonation petition. The judgment relied on by appellant counsel has no application to this case in view of the specific order of the Single Judge, giving liberty to the petitioner to prefer an appeal with a delay condonation petition. Prosecuting a *lis* in a wrong Court or in a wrong Forum may be ground to invoke provisions of Limitation Act to present the case before appropriate Court or Forum even after expiry of period of limitation with a delay condonation petition. Liberty was granted to appellant to file appeal with a delay condonation petition. As the leave granted by learned Single Judge is not complied, I have to accept the objection of the other side that the appeal is not filed within time and barred by limitation.

11. For these reasons, the appeal is dismissed at admission stage. No costs.

12. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:24.03.2015

Note: L.R. Copy to be marked.

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