

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION Nos.3739 and 3917 of 2015

COMMON ORDER:

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These two civil revision petitions pertain to the same parties and arise out of the same execution proceedings. They are therefore amenable to disposal by way of this common order.

The petitioner before this Court in these two cases is the claim petitioner who filed applications in E.P.No.227 of 2009 arising out of O.S.No.292 of 1999 on the file of the learned I Additional Junior Civil Judge, Bhimavaram. The said suit was decreed against the second respondent in these civil revision petitions. The petitioner herein filed E.A.No.48 of 2014 under Order 21 Rule 97 CPC. However, the said E.A. was dismissed for default by order dated 27.10.2014. Seeking restoration of the said E.A., the petitioner filed E.A.No.49 of 2015 and to condone the delay of 208 days in the presentation thereof, she filed E.A.No.48 of 2015. By separate orders dated 01.07.2015, the executing court dismissed both the applications. Aggrieved thereby, the petitioner is before this Court under Section 115 CPC.

The only ground for dismissal of the condone delay application was that the trial Court, relying on the judgment of the Supreme Court in **Damodaran Pillai v. South Indian Bank Ltd.**, opined that Section 5 of the Limitation Act, 1963 (for short, 'the Act of 1963'), would not be applicable to execution proceedings. In the light of the dismissal of the condone delay petition, the executing court dismissed the restoration petition also.

It is no doubt true that the general legal position, as is evident from a plain reading of Section 5 of the Act of 1963, is that the provisions thereof are not applicable to execution proceedings. However, Order 21 Rule 106 CPC was amended insofar as the erstwhile State of Andhra Pradesh is concerned in the year 1991 whereby sub-rule (4) was added. This sub-rule reads to the effect that the provisions of Section 5 of the Act of 1963 shall apply to all applications under sub-rule (3) of Rule 106 of Order 21 CPC. In that view of the matter, the general law that is prevailing in other States in the context of applicability of Section 5 of the Act of 1963 to execution proceedings would not be applicable in the erstwhile State of

Andhra Pradesh. The executing court, unmindful of the amendment of Order 21 Rule 106 CPC in the erstwhile State of Andhra Pradesh, relied upon the judgment of the Supreme Court, which has no applicability insofar as the erstwhile State of Andhra Pradesh is concerned owing to the aforestated amendment.

The orders passed by the executing court in both the cases are therefore unsustainable in law and are accordingly set aside. Both the applications are restored to the file of the executing court for consideration afresh on facts and in accordance with law.

The civil revisions petitions are allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

29th October, 2015

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