

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION Nos.4964 and 4966 of 2011

-
-
COMMON ORDER:
-

These two Revisions are filed under Section 115 CPC challenging the orders dt.03-11-2011 in I.A.Nos.770 of 2010 and 45 of 2010 in A.S.No.34 of 2009 of the Additional Senior Civil Judge, Tenali.

2. The petitioners herein filed O.S.No.132 of 2006 on the file of

I Additional Junior Civil Judge, Tenali for specific performance of an agreement of sale. The said suit was dismissed on 13-07-2009.

3. Challenging the same, the petitioners filed A.S.No.34 of 2009 before the I Additional Senior Civil Judge, Tenali. After they filed appeal, they came to know that 1st respondent in the appeal had died even when the suit was pending on 18-01-2008.

4. They therefore filed I.A.No.45 of 2010 under Section 5 of the Limitation Act, 1963 to condone the delay of 622 days in filing the application to set aside abatement of appeal and I.A.No.770 of 2010 under Order XXII Rule 19

CPC to set aside such abatement.

5. In the affidavits filed in support of these applications, they contended that respondents, who were aware of the death of

1st respondent on 18-01-2008, did not inform the same to the Court and after the appeal was filed, the petitioners came to know about it and then filed a memo in that regard. They however sought condonation of delay of 622 days in filing application to set aside abatement of appeal on that ground and to set aside the said abatement.

6. Counter affidavits were filed to these applications opposing condonation of delay and setting aside of abatement of appeal. It was alleged that 1st respondent had died during pendency of suit before commencement of trial and that petitioners were fully aware of the date of death of 1st respondent and had wantonly neglected to file application to implead the legal representatives of deceased

1st respondent and got the appeal abated. They contended that in the cause title of the depositions of P.Ws.1 and 2, it was mentioned that 1st respondent had died and therefore the petitioners are deemed to be aware

of the date of his death. They therefore contended that there is no sufficient cause shown by petitioners for condoning the said delay.

7. By separate orders dt.03-11-2011, the Court below dismissed both I.A.No.45 of 2010 and 770 of 2010. It held that the depositions of the petitioners show that they mentioned in the full cause title that 1st respondent died and therefore they are aware of the same and since they had failed to take steps to bring on record the legal representatives of the deceased 1st respondent and had been negligent in that regard, the applications are dismissed.

8. Challenging the same, these Revisions are filed.

9. The learned counsel for petitioners Sri V.V.L.N. Sharma contended that under Order XXII Rule 10A CPC, it was the duty of the counsel appearing for 1st respondent in the trial Court to inform the Court about the death of the party and then Court should issue notice to other party about the same. But in the present case, the learned counsel for respondents in the trial Court did not inform the Court about the death of 1st respondent and the Court below had also not informed the petitioners about the date of death. Therefore he contended that the petitioners

cannot be blamed for being negligent in the matter and since respondents had neglected to follow the procedure prescribed under Order XXII Rule 10A CPC, the petitioners cannot be penalized for the same. He also contended that the details about the date of death and legal representatives are required, to enable the petitioners to file petitions for condonation of delay in seeking to set aside abatement, to set aside abatement and to bring on record the legal representatives of the deceased

1st respondent; and unless these details are furnished by respondents through the counsel for respondents in the trial Court, the petitioners cannot be penalized.

10. In C.R.P.No.4964 of 2011 notices to respondent Nos.3 to 8 has been served. In C.R.P.No.4966 of 2011 Sri Ch.Ravindra Babu, learned counsel appears for respondent Nos.2, 4, 5, 7 and 8. Respondent Nos.3 and 6 have been served, but there is no appearance on their behalf. The learned counsel for 2nd respondent in C.R.P.No.4966 of 2011 stated that he is appearing for 2nd respondent in C.R.P.No.4964 of 2011.

11. The learned counsel for respondents contended that the orders passed by the Court below are correct and that

since the petitioners are aware of the death of 1st respondent, it has to be presumed that they are negligent in taking steps to seek setting aside abatement and therefore the orders of the Court below to be confirmed.

12. It is not disputed that the suit was filed by petitioners against respondents for specific performance of an agreement of sale. The

1st respondent/1st defendant is said to have died on 18-01-2008. Order XXII Rule 10A CPC mandates that whenever a pleader appearing for a party in the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party. There is no material placed on record by respondents to establish that this provision of law has been followed by the learned counsel for respondents in the Court below. In the absence of furnishing of details about the date of death and the details of the legal representatives of the deceased 1st respondent, the petitioner cannot be expected to take steps to bring on record the legal representatives of deceased 1st respondent/1st defendant. Merely because in the cause title, in the depositions of P.Ws.3 and 4, it was shown 1st respondent had died, it does not imply that petitioners were aware not

only about the date of death but also details of legal representatives of deceased 1st respondent. Since the provisions under Order XXII Rule 10A CPC were not adhered to by respondents, they cannot take advantage of their wrong and seek to blame the petitioners for not taking steps to bring on record the legal representatives of the deceased 1st respondent in time when the suit is pending in the trial Court. The Court below has clearly over looked Order XXII Rule 10A CPC while passing the impugned orders. Therefore, the said orders cannot be sustained.

13. Accordingly, C.R.P.Nos.4964 of 2011 and 4966 of 2011 are allowed and the orders dt.03-11-2011 in I.A.Nos.770 of 2010 and I.A.No.45 of 2010 in A.S.No.34 of 2009 are therefore set aside and both the said I.As. are allowed. No costs.

14. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 10-07-2015

Vsv/*