

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4848 of 2014

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.27.08.2014 in I.A.No.792 of 2011 in O.S.No.82 of 2004 on the file of X Additional Chief Judge, City Civil Court, Hyderabad.

2. The petitioner herein is the plaintiff in the above suit.

3. The said suit was filed by petitioner against respondents for specific performance of an agreement of sale dt.28.12.2001 allegedly executed by 1st respondent, and also to declare a sale deed dt.23.01.2004 executed by 1st respondent in favour of 2nd respondent as null and void, sham, fictitious, and for costs.

4. Pending suit, an order dt.18.04.2007 had been passed by the X Additional Chief Judge, City Civil Court, Hyderabad, rejecting an application filed by 2nd respondent/2nd defendant with regard to marking of the suit document on the ground that it is insufficiently stamped and unregistered.

5. The said order was questioned by her (i.e., 2nd respondent) in CRP.No.3768 of 2007. Pending that

Revision, she died on 04.01.2009.

6. According to petitioner, his counsel in the Court below served a memo dt.30.01.2009 before the trial court after furnishing a copy of it to the counsel for 2nd respondent, seeking particulars of the legal representatives of 2nd respondent, but the counsel for 2nd respondent failed to furnish the same.

7. However, the legal representatives of 2nd respondent had filed CMP.No.2245 of 2010 in CRP.No.3768 of 2007 and got themselves impleaded on 03.12.2010 in the CRP.

8. Ultimately, the C.R.P. was allowed on 03.12.2010.

9. Thereafter, the petitioner herein filed I.A.No.792 of 2011 on 26.08.2011 under Section 5 of the Limitation Act, 1963 to condone the delay of (874) days in impleading the legal representatives of 2nd respondent pointing out that the impleadment of legal representatives of 2nd respondent in the Revision was not known to them because their counsel had not communicated the order passed in the Revision to her, and that copy of the order in Revision was handed over by counsel for 2nd respondent to the counsel for petitioner herein only on 18.08.2011.

10. This application was opposed by 1st respondent on the ground that the petitioner, being a party to CRP.No.3768 of 2007, is deemed to be aware of the details of the legal representatives of 2nd respondent since petitioner had also been represented by the counsel in the said Revision, and therefore, the delay of (874) days in filing the application to bring on record the legal representatives of 2nd respondent, cannot be condoned.

11. By order dt.27.08.2014, the Court below accepted the petition of 1st respondent and dismissed I.A.No.792 of 2014. It held that the impleadment of legal representatives of 2nd respondent in CRP.No.3768 of 2007 is deemed to be within the knowledge of petitioner, and since she slept over the matter till 26.08.2011, the said delay is deliberate, and is not liable to be condoned.

12. Challenging the same, the present Revision is filed.

13. Heard Sri G. Satish, counsel for petitioner, and Sri L. Prabhakar Reddy, counsel for respondent nos.3 to 6. None appears for 1st respondent even though notice to 1st respondent has been served.

14. The counsel for petitioner contended that there is no denial by the counsel for respondents that a memo had been filed on 30.01.2009 in the Court below by the

counsel for petitioner seeking details of legal representatives of the deceased-2nd respondent, and there is also no denial in the counter-affidavit filed by 1st respondent of the said fact. It is also not disputed that on 19.12.2011, only the counsel for legal representatives of 2nd respondent through a General Power of Attorney furnished the details of respondent nos.4 to 6. He therefore contended that order 22 Rule 10A C.P.C. has clearly been violated in this case and respondents cannot claim any advantage in view of the fact that in the Revision filed by 2nd respondent, they had been impleaded as her legal heirs.

15. On the other hand, the counsel for respondent nos.3 to 6 supported the order passed by the Court below and contended that once the legal representatives of 2nd respondent had been impleaded in C.R.P.No.3768 of 2007, all particulars of the legal representatives of 2nd respondent have to be presumed to be in knowledge of petitioner and no indulgence can be shown as regards condonation of delay.

16. Order 22 Rule 10A C.P.C. obliges the pleader appearing for a party to the suit, on coming to know about the death of the party to inform the court about it, if the court is thereupon required to give notice of such death to the other party. This provision has been introduced to

obviate any confusion about the knowledge of the death of opposite party and to ensure that steps can be taken to bring on record the legal representatives of deceased party by the opposite party within a reasonable time prescribed by law.

17. There is a specific averment in I.A.No.792 of 2011 that the counsel for petitioner had served a memo on 30.01.2009 before the Court below after furnishing a copy of it to the counsel for 2nd respondent to furnish the particulars of legal representatives of 2nd respondent and that the said counsel failed to furnish the same.

18. This allegation is not denied by 1st respondent.

19. The counsel for petitioner has placed on record a memo dt.19.12.2011 filed by counsel for 3rd respondent, who is also the GPA Holder of respondent nos.4 to 6, furnishing details of respondent nos.4 to 6.

20. It may be that in CRP.No.3768 of 2007 filed by 2nd respondent her legal representatives had been impleaded, but the said application had been filed in the High Court. Notwithstanding the fact that the petitioner was represented in the said case, which was disposed of on 03.12.2010, the petitioner contended that the counsel who appeared for petitioner in the High Court had not communicated the same to petitioner, and therefore, she

was not aware of this fact.

21. I see no reason to disbelieve this statement of petitioner.

22. In **Rudrappa Ramappa Jainpur and Ors. vs. State of Karnataka**^[1] and **Rudrappa Ramappa Jainpur and Ors. vs. State of Karnataka**^[2], the Supreme Court has held that an application for bringing on record legal representatives cannot be rejected merely because an application to set aside the abatement or to condone delay in seeking to set aside abatement is not filed and that these prayers are implied in the said application.

23. These two decisions as well as Order 22 Rule 10A C.P.C. have been considered by this Court in CRP.No.5448 of 2012 decided on 12.08.2015 and this Court had held that applications for condonation of delay in seeking to set aside abatement have to be liberally considered keeping in view Order 22 Rule 10A C.P.C.

24. Having regard to the above decisions, I am not inclined to consider the decision in **Syed Noor Mohammad v. Syed Khaja Moinuddin and others**^[3] being relied upon by the counsel for respondents, since the said view is not in consonance with the decisions of the Supreme Court referred to above, which have not been considered in the said judgment.

25. Therefore, the Civil Revision Petition is allowed and the order dt.27.08.2014 in I.A.No.792 of 2011 in O.S.No.82 of 2004 on the file of X Additional Chief Judge, City Civil Court, Hyderabad is set aside, and the said I.A. is allowed. No order as to costs.

26. Since the suit is an old suit, the lower court is directed to dispose it of as expeditiously as possible preferably within a period of six (06) months from the date of receipt of a copy of this order.

27. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 14.10.2015
Ndr/*

[\[1\]](#) AIR 2004 SC 4148

[\[2\]](#) (2003) 10 SCC 691

[\[3\]](#) AIR 2008 AP 82