

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF
ANDHARA PRADESH

C.R.P.Nos.1051, 1063, 1064, 1065 and 1066 of 2015

Between:

Poola Ganapathi and others.

.....Petitioners

and

K.Prabhavathi

.....Respondent

Date of Judgment pronounced : 11-08-2015

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked :
Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

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

C.R.P.Nos.1051, 1063, 1064, 1065 and 1066 of 2015

COMMON ORDER:

Heard Sri V.Eswaraiah Chowdary, learned counsel

for the petitioners and Sri C.Hari Preeth, learned counsel for the respondent.

2. Since a common point arises in these Revision Petitions which arise out of the same suit, these Revision Petitions are disposed of by this common order.

3. The petitioners in these Revision Petitions are judgment debtors in O.S.No.141 of 2007 on the file of the Principal Senior Civil Judge, Puttur. The respondent in these Revision Petitions had filed the suit for perpetual injunction against the petitioners herein which came to be decreed on 15-12-2011. Thereafter, alleging that the petitioners herein had violated the said decree, E.P.No.18 of 2012 was filed by the respondent under Order 21 Rules 37 and 38 CPC seeking arrest of the petitioners.

4. In the said E.P., the petitioner in C.R.P.No.1066 of 2015 was set *ex parte* on 26-12-2012. The petitioners in C.R.P.No.1065 of 2015 were set *ex parte* on 18-12-2012; the petitioner in C.R.P.No.1063 of 2015 was set *ex parte* on 26-12-2012; thereafter warrants for arrest of the petitioners in C.R.P.No.1051 of 2015 were issued on 03-04-2013; warrant for arrest of petitioner in C.R.P.No.1064 of 2015 was issued on 03-04-2013.

5. The petitioner in C.R.P.No.1063 of 2015, filed E.A.No.93 of 2013 to set aside the order dt.26-12-2012 setting him *ex parte* in the E.P.; the petitioners in

C.R.P.No.1065 of 2015, filed E.A.No.126 of 2013 to set aside the order dt.18-10-2012 setting them *ex parte* in the E.P.; and the petitioner in C.R.P.No.1066 of 2015, filed E.A.No.94 of 2013 to set aside the order dt.26-12-2012 setting him *ex parte*. These applications were filed on 08-04-2013, 02-05-2013 and 08-04-2013 respectively. But no applications under Section 5 of the Limitation Act, 1963 were filed along with these applications.

6. The petitioners in C.R.P.No.1051 of 2015 filed E.A.No.179 of 2013 on 19-06-2013 to recall the warrant issued on 03-04-2013 against them and the petitioner in C.R.P.No.1064 of 2015 filed E.A.No.180 of 2013 to recall the warrant issued against him on 03-04-2013.

7. By separate orders dt.20-02-2015, the Principal Junior Civil Judge, Puttur dismissed E.A.Nos.93, 126 and 94 of 2013 holding that the applications to recall the orders setting the petitioners *ex parte* were filed beyond the period of 30days specified in Order 21 Rule 106 (3) CPC and therefore said applications cannot be maintained without applications under Section 5 of the Limitation Act, 1963 filed seeking condonation of delay in filing them. It also dismissed E.A.Nos.179 of 2013 and 126 of 2013 on the ground that E.A.No.126 of 2013 and 94 of 2013 as well as E.A.No.93 of 2013 had been dismissed.

8. Challenging the order in E.A.No.179 of 2013, C.R.P.No.1051 of 2015 is filed; challenging the order in E.A.No.93 of 2013, C.R.P.No.1063 of 2015 is filed; challenging the order in E.A.No.180 of 2013, C.R.P.No.1064 of 2015 is filed; challenging the order in E.A.No.126 of 2013, C.R.P.No.1065 of 2015 is filed; and challenging the order in E.A.No.94 of 2013, C.R.P.No.1066 of 2015 is filed.

9. Learned counsel for the petitioners in all these Revision Petitions contended that Section 5 of the Limitation Act, 1963 itself states that it would not apply to execution petitions and that the Supreme Court in **Damodaran Pillai and others Vs. South Indian Bank Limited**^[1] has held that for execution proceedings, application under Section 5 of the Limitation Act, 1963 seeking condonation of delay was not maintainable and that the Court cannot invoke inherent power and condone the delay.

10. Learned counsel for the respondent on the other hand pointed out that in the State of Andhra Pradesh, there is an amendment to Order 21 Rule 106 and sub rule (4) has been added thereto by the High Court of Andhra Pradesh in 1991 making Section 5 of the Limitation Act, 1963 applicable to all the applications under the sub Rule (4) of Order 21 Rule 106. He contended that in view of the said amendment, which was

also considered by the Full Bench of this Court in **Ch.Krishnaiah Vs. Ch. Prasada Rao** ^[2], applications under Section 5 of the Limitation Act would have to be filed along with applications to set aside *ex parte* orders in execution proceedings in case such applications are filed beyond the period of one month specified in Order 21 Rule 106 (3) CPC; and that since such applications were not filed by the petitioners, the Court below was right in dismissing E.As. filed by them.

11. I find force in the contention of learned counsel for the respondent.

12. In **Ch.Krishnaiah** (2 supra), a Full Bench of this Court held that although Section 5 of the Limitation Act, 1963 itself states that it has no application to execution proceedings filed under Order 21 Rule 106 (3) CPC, in view of the amendment to Order 21 Rule 106 by the High Court of Andhra Pradesh adding sub rule (4) thereto making Section 5 of the Limitation Act applicable to applications under Order 21, in 1991, an application to set aside an *ex parte* order passed under Rule 105 (2) can be filed even after 30 days by seeking condonation of delay as provided Rule 106 (4) of Order 21 CPC. It distinguished the judgment of the Supreme Court in **Damodaran Pillai and others** (1 supra) on the ground that the said case arose out of proceedings instituted in the State of Kerala where there was no similar

amendment as in Andhra Pradesh making the provisions of Section 5 of the Limitation Act, 1963 applicable to execution proceedings.

13. In view of the said decision of the Full Bench, I do not find any error in the orders passed by the Court below in dismissing the E.As. filed by the petitioners.

14. Therefore, all the Civil Revision Petitions are dismissed. However, this order does not preclude the petitioners from filing applications to recall the orders setting them *ex parte* afresh by filing along with these applications under Section 5 of the Limitation Act, 1963 and if such applications are filed, the Court below shall consider the same in accordance with law and pass orders therein. No costs.

15. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11-08-2015

kvr

[\[1\]](#) 2005 (4) CCC 1 (SC) = (2005) 7 SCC 300

[\[2\]](#) 2009 (6) ALT 82 (f.b.)