

HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.2613 of 2013 & C.R.P.No.486 of 2015

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COMMON ORDER:

Since these two revisions are interrelated, this Court deems it appropriate to dispose of these revisions, by way of this common order.

2. Heard Sri P.Venkat Reddy, learned counsel for the petitioners and Sri K.Venumadhav for the respondent apart from perusing the material available before the Court.

3. The respondent herein instituted suit O.S.No.55/2008, on the file of the Court of the Senior Civil Judge, Jagityal, Karimnagar District, against the petitioners herein for declaration of title and perpetual injunction in respect of the suit schedule property admeasuring 1305 sq yards situated in Sy.Nos.145 and 146 of Hazipura/Rahamathpura locality of Koratla proper, Karimnagar District.

4. In the said suit, the learned Senior Civil Judge, passed an *ex parte* decree on 21.11.2008. Then, the defendants/petitioners herein filed I.A.No.332/2009 under the provisions of Order 9 Rule 13 of the Code of Civil Procedure (hereinafter called 'the Code') and also I.A.No.190/2009 seeking condonation of delay of 130 days in filing the said application. The learned Senior Civil Judge, Jagityal, by way of a common order dated 13.08.2010, dismissed the said applications. As against the said orders, the defendants/petitioners herein filed CMA.Nos.9 and 10 of 2010, on the file of the Court of the Second Additional District Judge, karimnagar at Jagityal and the learned Additional District Judge, by way of a common order dated 30.12.2011, dismissed the said appeals, holding obviously that the order passed on Section 5 application is not appealable.

5. Questioning the order passed by the learned Senior Civil Judge dismissing I.A.No.190/2009, the present CRP.No.2613 of 2013 came to be field. As against the order dated 30.12.2011 passed by the Court of the Second Additional District Judge, Karimnagar at Jagityal dismissing CMA.Nos.9 and 10 of 2010, CRP.No.486 of 2015 came be to instituted.

6. It is contended by the learned counsel for the petitioners that the orders of the Court below are erroneous, contrary to law and are opposed to the very spirit and object of the provisions of Section 5 of the Limitation Act and Order 9 Rule 13 of the Code. It is further contended by the learned counsel that since substantial property rights are involved, the Court below ought to have given opportunity to the defendants/petitioners herein to prosecute the suit on merits. It is further contended that the Courts below ought to have adopted liberal approach. It is also contended that the reasons assigned by the Courts below in the impugned orders are neither sustainable nor tenable in the eye of law. It is also the contention of the learned counsel that had the contents in the affidavit filed in support of the applications been considered from a proper perspective, the orders impugned would not have emanated. It is also the contention of the learned counsel that the *ex parte* judgment passed by the Court below is not in accordance with the provisions of Order 20 Rule 1 of the Code.

7. In support of his submissions and contentions, learned counsel for the petitioners places reliance on ***N.BALAKRISHNAN v. M.KRISHNAMURTHY*** and ***BALRAJ TANEJA AND ANOTHER v. SUNIL MADAN AND ANOTHER***.

8. On the contrary, it is vehemently contended by the learned counsel for the plaintiff/respondent herein that the orders passed by the Courts below are in accordance with the provisions of Section 5 of the Limitation Act and Order 9 Rule 13 of the Code. It is also the contention of the learned counsel that there is neither any illegality nor any material infirmity in the orders impugned, as such, the present revisions are not maintainable. It is also contended that since the Courts below assigned valid and convincing reasons, the orders impugned are not amenable for any correction by this Court.

9. In the above background, now the issues that emerge for consideration of this Court are:

1. Whether the orders under challenge are in accordance with the provisions of Section 5 of the Limitation Act and Order 9 Rule 13 of the Code of Civil Procedure? and

2. Whether the orders under challenge warrant any interference of this Court?

10. There is absolutely no dispute with regard to the facts that the respondent herein instituted the suit on 02.07.2008 and appearance was filed on behalf of the

defendants on 20.08.2008 and the matter was adjourned to 31.10.2008 subject to payment of costs of Rs.100/- and on 31.01.2008 the defendants were called absent and set *ex parte* and the Court below posted the matter for plaintiff's evidence on 12.11.2008. It is also clear from the information available on record that on 12.11.2008 as the Presiding Officer was on leave, the matter was posted to 21.11.2008 and subsequently on 21.11.2008, PW.1 was examined and Exs.A.1 to A.13 were marked. The learned Senior Civil Judge decreed the suit on 21.11.2008 and rendered the following Judgment:

“PW.1 examined, Exs.A.1 to A.13 are marked. Suit claim of the plaintiff is proved. Therefore the suit is decreed as prayed for with costs and accordingly the decree has to be drawn and suit disposed off. “

11. Thereafter, with a delay of 132 days, the defendants/petitioners herein filed an application under Order 9 Rule 13 of the Code, seeking to set aside the *ex parte* decree dated 21.11.2008. According to the affidavit filed in support of I.A.No.190/2009, after service of summons on the defendant/petitioners herein, they approached one Mr.G.Venu, Advocate, native of Koratla proper and practicing advocate at Metpalli and Jagityal and gave vakalat and all the documents pertaining to the subject lands and requested to defend the suit. Petitioners herein further stated that the said advocate filed vakalat on their behalf and in the last week of October, 2008, the first petitioner herein had fallen ill and suffered from Poly Arthritis disease and approached the Doctor at Korutla for treatment of the said disease and due to the said illness, he could not attend the normal works and his wife/petitioner No.2 had to attend. In order to show the illness of the first petitioner herein a certificate issued by the Doctor was also filed before the Court below. In the said supporting affidavit, petitioners herein further stated that their counsel informed that he shifted his practice to Hyderabad.

12. On the other hand, the plaintiff/respondent herein filed a counter, denying the averments made in the affidavits filed in support of the applications and stated that there is no truth in the statement of the petitioners that their advocate shifted to Hyderabad and that their advocate is very much there at Korutla.

13. A perusal of the orders passed by the learned Senior Civil Judge dismissing the applications filed by the petitioners herein, shows that the learned Senior Civil Judge came to a conclusion that the petitioners herein did not adduce oral evidence to disclose the record placed by the respondent/plaintiff. There is absolutely no

dispute with regard to the reality that the petitioners herein filed a medical certificate dated 27.09.2009 issued by the Medical Practitioner at Korutla to show that the first petitioner herein suffered from Poly Arthritis disease from 25.10.2008 and the first petitioner was advised rest for six months i.e., till 26.04.2009.

14. While referring to the attendance of the counsel for the petitioners for various functions at Korutla within 7.03.2009 to 12.03.2009 and 20.09.2008 to 06.10.2008, the learned Judge refused to believe the version of the petitioners herein.

15. In this connection, it may appropriate and relevant to refer to the judgmentS of the Hon'ble Apex Court in **N.BALAKRISHNAN** (*supra 1*) and **BALRAJ TANEJA AND ANOTHER** (*supra 2*).

16. In **N.BALAKRISHNAN** (*supra 1*), the Hon'ble Apex Court, at paragraph 13, held as follows:

“13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

17. In **BALRAJ TANEJA AND ANOTHER** (*supra 2*), at paragraph 43, the Hon'ble Apex Court, held as follows:

“43. Learned Counsel for respondent No. 1 contended that the provisions of Order 20, Rule 1(2) would apply only to contested cases as it is only in those cases that "the points for determination" as mentioned in this Rule will have to be indicated, and not in a case in which the Written Statement has not been filed by the defendants and the facts set out in the plaint are deemed to have been admitted. We do not agree. Whether it is a case which is contested by the defendants by filing a Written Statement, or a case which proceeds ex-parte and is ultimately decided as an ex-parte case, or is a case in which the Written Statement is not filed and the case is decided under Order 8 Rule 10, the Court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved.”

18. As per the judgment in **N.BALAKRISHNAN** (*supra 1*), if the explanation offered by the applicant does not suffer from any *mala fides* and is not intended for protracting the matter, the Courts are required to show utmost consideration to the suitor. According to the judgment in **BALRAJ TANEJA AND ANOTHER** (*supra 2*), the Courts are required to adhere to the provisions of Order 20 Rule 1 (2) of the Code of Civil Procedure.

19. According to Rule 4 (2) of Order 20 of the Code of Civil Procedure, Judgments of Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

20. A perusal of the copy of the judgment placed on record by the learned counsel clearly shows that the learned Senior Judge did not adhere to the above mentioned provisions of Order 20 Rule 4 (2) of the Code of Civil Procedure.

21. Taking into consideration, the totality of the circumstances and the nature of property and the substantial rights of the parties involved in the matter and taking into consideration the cryptic *ex parte* order passed by the learned Senior Civil Judge, contrary to the provisions of Order 20 Rule 4 (2) of the Code of Civil Procedure, though there are certain lapses on the part of the defendants, this Court is inclined to afford opportunity to the defendants/petitioners herein to contest the suit on merits.

22. For the aforesaid reasons, the revisions are allowed and the order dated 13.08.2010 passed in I.A.No.190/2009 in O.S.No.55/2008, on the file of Senior Civil Judge, Jagitial, Karimnagar and the order dated 30.12.2011 passed in CMA.Nos.9 and 10 of 2010, on the file of the II Additional District Judge, Jagitial, Karimnagar are set aside. Consequently, I.A.No.190/2009 in O.S.No.55/2008 is allowed subject to the condition of the petitioner paying a sum of Rs.10,000/- (Ten Thousand Only) to Sri N.Rajender, Advocate assisting the counsel on record for the respondent, within a period of one week from the date of receipt of this order. It is also made clear that in the event of non-adherence to the said condition, the orders impugned would automatically get revived. Miscellaneous petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:02.04.2015

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HON'BLE SRI JUSTICE A.V.SESHA SAI

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Date : 02-04-2015

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Between:

Sreepada Seetha Ramulu,
S/o Bhoomaiah, aged 60 years,
Occupation: Business and two others.

... Petitioners

and

Pudari Ganga Reddy,
S/o Shiva Lingam, Aged 53 years,
Occupation: Agriculture and Business,
R/o. Kacharam Village, Medipalli Revenue Mandal.

... Respondent

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