

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.3704 of 2016

%18-11-2016

Between:

G. Govindappa

**... PETITIONER/RESPONDENT No.1/
PLAINTIFF**

a n d

\$P.R. Ramakrishna Rao and others

... RESPONDENTS/DEFENDANTS

< GIST:

> HEAD NOTE:

!Counsel for petitioner: Smt.Akella Padma

^Counsel for Respondents: Sri P. Narahari Babu

? Cases referred

AIR 1998 SC 3222

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

* * * *

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JUDGMENT PRONOUNCED ON : 18-11-2016

THE HON'BLE SRI JUSTICE A.V. SESA SAI

1. Whether Reporters of Local newspapers :
may be allowed to see the judgments?
2. Whether the copies of judgment may be :
marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to :
see the fair copy of the judgment?

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.3704 of 2016

ORDER:

Plaintiff in O.S.No.48 of 2010 on the file of the Court of the Junior Civil Judge, Madakasira, Ananthapuramu District is the petitioner in the present revision. This revision calls in question the order, dated 17-06-2016 passed by the said Court in I.A.No.270 of 2012.

The circumstances leading to filing of the present revision are as under:

Petitioner herein instituted O.S.No.48 of 2010 for declaration of title and permanent injunction. The suit schedule property is an extent of Ac.2-00 cents situated in Sy.No.108 of Dodderi village polam limits SRD of Madakasira of Ananthapuramu District. The learned Junior Civil Judge passed an *ex parte* decree on 07-06-2011. Praying to set aside the *ex parte* decree, the defendants/respondents herein filed an application under Order IX Rule 13 of Code of Civil Procedure and along with the said application they also filed a petition under Section 5 of the Limitation Act, seeking condonation of delay of 394 days in filing the said application. The plaintiff/petitioner herein contested the said application by filing counter. The learned Junior Civil Judge, Madakasira

allowed the said application. The validity of the same is under challenge in the present revision.

Heard, Smt A. Padma, learned counsel for the plaintiff/petitioner and Sri P. Narahari Babu, learned counsel for the defendants/respondents apart from perusing the material available before this Court.

It is contended by learned counsel for the petitioner that the questioned order is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Section 5 of the Limitation Act. It is further argued that the respondents herein did not assign any reasons much less valid reasons in the supporting affidavit, as such, the learned Junior Civil Judge, grossly went wrong in allowing the application. It is also submitted by learned counsel that the learned Judge ought not to have allowed the present application as the petitioner herein filed Execution Petition No.14 of 2012 for recovery of suit costs by way of arrest of the respondents herein and the respondents paid the costs also and eventually the said E.P. was also closed. It is further argued by learned counsel that the reasons assigned in the supporting affidavit are vary vague and devoid of any clarity as regards the date of death of the counsel, as such, the Court below ought to have dismissed the application.

On the contrary, it is submitted by learned counsel for the defendants/respondents that there is no error nor there exists any infirmity in the impugned order, as such, the same is not amenable for any judicial review by this Court. It is further contended that the case of the petitioner that in view of the recovery of the suit costs and termination of E.P., the application ought not to have been allowed cannot be sustained in the eye of law. It is further submitted that even before termination of E.P., being the law-abiding citizens, the respondents herein paid the suit costs and the same does not mean that the defendants accepted the decree. It is further submitted that the learned Junior Civil Judge correctly and justly exercised the discretion under Section 5 of the Limitation Act and the same is in consonance with the settled proposition of law.

In support of his submissions and contentions learned counsel for the respondents places reliance on the judgment of the Hon'ble Apex Court in case of N. Balakrishnan v. M. Krishnamurthy reported in AIR 1998 SC 3222.

In the above backdrop, now the issues which this Court is called upon to answer in the present revision are:

1. *Whether the learned Junior Civil Judge is justified in allowing the application filed by the respondents herein under Section 5 of the Limitation Act?*

2. Whether the questioned order warrants any interference of this Court?

The subject matter of the suit in the present case is an extent of two acres of land and the relief sought is for declaration of title and permanent injunction. Therefore, undoubtedly substantial rights of the parties are involved.

In the affidavit filed in support of the present I.A.No.270 of 2012, filed under Section 5 of the Limitation Act, the case of the defendants is that earlier the plaintiff and his brother filed O.S.No.56 of 2007 on the file of the Court of the Junior Civil Judge, Madakasira against the 1st defendant and his mother for permanent injunction and on contest said suit was dismissed on 16-09-2009 and by suppressing the same the plaintiff/petitioner herein filed the present suit. It is also the case of the defendants that they engaged one Sri P.T. Lakshminarsimham, Advocate and he passed away pending suit. Obviously it is the case of the defendants/respondents herein that they did not have the knowledge of the suit being decreed till they received notice in the Execution Petition.

On the other hand, it is the case of the plaintiff/petitioner herein that there is no proper explanation for the delay and in view of payment of entire amount of costs in the

E.P. the defendants/respondents herein cannot maintain the present application.

In the instant case, an *ex parte* decree was passed on 07-06-2011. The plaintiff/petitioner herein filed Execution Petition No.14 of 2012 on 16-04-2012. According to the defendants, they came to know of passing of *ex parte* decree only after receipt of notice in the said E.P. The record further discloses that the defendants/respondents herein filed an application under Order IX Rule 13 of Code of Civil Procedure and so also the present application on 06-07-2012. Therefore, the Court below correctly found that the payment of suit costs by defendants on 17-09-2012 would not come in the way of defendants to maintain the present application.

As evident from the order under challenge, the learned Junior Civil Judge, duly taking into consideration the death of the counsel for the defendants pending suit and also taking into consideration the certified copies of sale deeds, adangal, 1B extract filed by the defendants along with the present application, allowed the present application while recording a finding that the defendants have shown diligence in prosecuting the case.

In this context, it may be appropriate to refer to the judgment of the Hon'ble Apex Court in case of

N. BALAKRISHNAN v. M. KRISHNAMURTHY¹. In the said judgment the Hon'ble Apex Court at paragraph Nos.13 and 14 held as under:

"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.

14. In this case explanation for the delay set up by the appellant was found satisfactory to the trial court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising reversional jurisdiction. Nonetheless, the respondent must be compensated particularly because the appellant has secured a sum of Rs. Fifty thousand from the delinquent advocate through the Consumer Disputes Redressal Forum. We, therefore, allow these appeals and set aside the impugned order by restoring the order passed by the

¹AIR 1998 SC 3222

trial court but on a condition that appellant shall pay a sum of Rupee Ten thousand to the respondent (or deposit it in this court) within one month from this date.”

In the instant case also the explanation offered by the defendants is not tainted with any malafides nor it amounts to adopting any dilatory strategy.

As observed supra, the suit schedule property is a valuable property of two acres of land and substantial rights of the parties are involved. Therefore, having regard to the reasons assigned by the learned Judge and having regard to the judgment referred to above, this Court does not find any valid reason to meddle with the well articulated order passed by the Court below in exercise of its discretion under Section 5 of the Limitation Act.

For the aforesaid reasons, the Civil Revision Petition is dismissed. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.V. SESA SAI, J

November 18, 2016

Note: L.R. copy to be marked. B/o.Pn

THE HON'BLE SRI JUSTICE A.V. SESA SAI



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