

• HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

± C.R.P.No.4289 OF 2015

% 4^h day of August, 2016.

Between:

Mekala Satyanarayana

.. Petitioner

VS.

\$ Angadala Veera Raju and others

.. Respondents

! Counsel for the petitioner: Sri Thota Suneetha

^ Counsel for the respondents : Sri K.Sai Mohan Rao

< **Gist:**

> Head Note:

? CITATIONS:

¹ 2008(4) ALD 71

² 1996(5) SCC 181

³ AIR 1982 SC 558

⁴ 2001(1) ALD 77(DB)

⁵ 2002(6) ALD 251

⁶ 2015(4) ALD 394

⁷ AIR 1958 SC 687

⁸ AIR 2005 SC 2821(1)

⁹ (2003) 8 SCC 498

¹⁰ (2004)8 SCC 402

11AIR 2005 SC 353(1)

12 (1966) AIR 1966 SC 1631

13 AIR 1968 AP 309(VOL.55, C.68)

14 2010(7) scale 428



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

Case No.C.R.P.No.4289 OF 2015

Between:

Mekala Satyanarayana

... Petitioner

And

Angadala Veera Raju and others

... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: **04.08.2016**

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

- 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 Yes
- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO**C.R.P.No.4289 OF 2015****ORDER :**

The revision petitioner is the unsuccessful petitioner in I.A.No.438 of 2014 in E.L.O.P.No.5 of 2013 on the file of Principal Junior Civil Judge, Gudivada, Krishna District, filed under Rule 3(ii) of the A.P.Panchayat Raj (Election Tribunals in respect of Gram Panchayats, M.P.Ps., and Z.P.Ps.) Rules, 1995 (for short 'the Rules 1995) in relation to the election of the Guntakoduru Grampanchayat.

2. The election petition was filed by the unsuccessful candidate against four respondents including the revision petitioner (R.1) viz. the elected candidate, Returning Officer, Mandal Development Officer, and Secretary, Guntakoduru Grampanchayat, on several grounds.

3. The election petition was presented on 06.08.2013, which contains the seal of the Junior Civil Judge-cum-Election Tribunal, of presentation on that date. The election petition is running in 11 paras and in para 10 (internal page 7), it was mentioned that the petitioner filed a lodgment schedule for issue of challan for a sum of Rs.100/-, after obtaining challan from the Court, original challan will be filed before the Court after deposit of the amount. Apart from it, a fixed Court fee of Rs.50/-, which is payable under Article

11(v)(ii) of the A.P. Court Fee and Suits Valuation Act, is paid and the prayer at para 11 of the petition is to declare the election of the 1st respondent, declaring him as an elected candidate of the 4th respondent Grampanchayat, as void, for costs and to grant such other relief or reliefs.

4. After service of notice, 1st respondent to the election petition filed the I.A.No.438 of 2014 under Section 5(2) of the Rules, 1995 seeking to dismiss the election OP on the ground of violation of the mandatory provision of depositing a fee of Rs.200/- on the date of presentation of the election petition.

5. The averments in the petition, in support of seeking to reject the election petition for alleged non-deposit of Rs.200/- with the election petition in saying mandatory, that the petitioner has to pay necessary Court fee on the same day when petition was presented, otherwise, the petition be dismissed, that having presented O.P. on 06.08.2013, obtained challan for depositing Rs.200/-, not deposited the amount on the same day as required by Rule 5(2) of the Rules, 1995, but deposited the same two days later and it tantamounts to violation of the mandatory provisions of depositing the amount and the election petition is liable to be rejected.

6. The 1st respondent to this application to reject the election petition, i.e the election petitioner, filed counter by

denying the averments and by contending that the 1st respondent has to deposit Rs.100/- only before the election Tribunal as security deposit and he deposited the amount having obtained challan that was issued by the Court in compliance with the mandatory rules and the petition is filed only to drag on the proceedings and thereby deserves dismissal.

7. It is after respective pleadings supra and after hearing both sides, by impugned order dated 03.09.2015, learned Principal Junior Civil Judge-cum-Election Tribunal, dismissed the application to reject the election petition, mainly with the observations that the deposit has to be made as per the rules with election petition and not mentioned when the deposit has to be made and its procedure, he filed petition and also applied for challan and challan has been given to deposit the amount and he paid the same on 08.08.2013, within two days to the date of filing of the election petition on 06.08.2013, since obtained challan on that day and the period of payment of deposit not specified by the rule or by any other provision of law even in CPC and for the delay caused is not intentional and voluntary.

8. The same is impugned in the revision by the unsuccessful petitioner supra, with the contentions in the grounds vis-à-vis the oral submissions, that when Rule 5(1) of the Rules, 1995, which postulates the deposit of Rs.100/- at

the time of presentation of election O.P. and Rule 5(2) of the Rules, 1995 says that non-compliance of the same deserves rejection of the election petition, the compliance is thereby mandatory from the statutory provision and the failure deserves dismissal and the Court did not properly advert to the facts and went wrong and beyond the scope of the provision and also misunderstood the law laid down in **Maddipatla Jagan Mohan Rao v. Akula Naga Malleswari and others**¹ and hence, sought to set aside the impugned dismissal order of the lower Court, by allowing the revision and consequently by rejecting the election petition.

9. Whereas, it is the contention of the learned counsel for the 1st respondent, who is the election petitioner, who succeeded in the lower Court, in support of the order of the lower Court and also by saying that the Rule 5 is required to read with Rule 3 of the Rules, 1995, which says an election petition should be filed within 30 days from the date of election and the deposit made by any stretch of imagination is within time and that was the observation of the learned single Judge of this Court in **Maddipatla Jaganmohan Rao** supra referring to the earlier Division Bench expression of this Court, which also scrutinized the expression of the Apex Court in this regard and as such the revision petition deserves to be dismissed.

¹ 2008(4) ALD 71

10. Heard and perused the material available on record.

11. Rule 5 of the Rules 1995 reads as follows:

“5((i) At the time of presentation of the petition, the petitioner shall deposit with it in case Rs.100/- (Rupees one hundred only) as security for the costs of the same.

Explanation: Where the election of more than one returned candidate is called in question a separate deposit shall be made in respect of each such returned candidate.

(ii) If the provisions of sub-rule (1) are not complied with the Election Tribunal shall dismiss the petition.

(iii) Upon compliance with provisions of sub-rule (1), the Election Tribunal shall proceed to enquire into the petition.”

12. Rule 3 of the Rules, 1995 reads as follows:

“3 (1) The election petition shall be presented within thirty days from the date of the declaration of the result of the election.

Explanation: If the Court of the Subordinate Judge or the District Munsiff, as the case may be, or the Office of the Officer of the Government who is the Election Tribunal is closed on the last day of the thirty days aforesaid, the petition may be presented to the Election Tribunal on the next day afterwards on which such Court or Tribunal is open.

(ii) The petition shall contain a statement in concise form, the material facts on which the petitioner relies and the particulars of any corrupt practices which he alleges and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908.”

13. Counter affidavit is filed in opposing the revision petition, mainly stating at para 6 that he offered to deposit Rs.100/- into the Court, however he was directed to take

challan and deposit the amount into the Court in accordance with the lodgment schedule, that he received the challan on the date of filing the election petition on 06.08.2013 and, having deposited Rs.100/- on 08.08.2013, when Rule 5 of the Rules, 1995, which is to be read with Rule 3 of the Rules, 1995 allows to file election petition within 30 days, it is only to deposit within the said time and thereby the Rule is to be construed as directory, though termed as mandatory. Once that is the conclusion arrived at by the trial Court and deposited within two days, there is a sufficient compliance. The so called offer to pay in cash on the date of presenting election petition is, however, silent either from the docket order of the lower Court or even from the petition averments, as the main petition, in the averments at para 10 supra, itself mentions that he filed lodgment schedule for issuing challan for Rs.100/- to deposit the amount. Rule 5(iii) of the Rules, 1995 speaks that if compliance is made, the Tribunal shall proceed to enquire into the petition.

14. As referred supra, Rule 5(1) of the Rules, 1995 speaks that the petitioner shall deposit at the time of presenting the petition in cash Rs.100/- as security for the costs of the petition. No doubt, in the revision counter, it is referred of his intention to deposit in cash, however, challan was issued to deposit through the lodgment schedule filed. Here, it is further to be seen whether strict compliance is required or

not. The Apex Court in **Dr. (Smt.) Shipra, Etc. Etc. vs Shanti Lal Khoiwal**² (Three Judge Bench) observed in relation to the election dispute under the Representation of the People Act in proper presentation of the application containing also the allegations of corrupt practice with a copy of affidavit in support of allegations of corrupt practice to be accompanied with the copy of the petition as required by Rule 94-A of the Conduct of Elections Rules, read with proviso (2) to Section 83(1) of the Representation of People Act, but sworn before the Magistrate of First Class or a Notary or a Commissioner of Oaths and in Form 25, the said requirement is mandatory and forms integral part of the petition. In case of non compliance therewith, copy of the petition cannot be treated as duly received as the omission would be of vital in nature. It was observed therefrom that the Registrar of High Court would have rejected and no objection taken does not entitle waiver nor take away the right of the opposite candidate to the election petition to seek for rejection, by raising the same.

15. In fact in **M.Karinanidhi v H.V.Hande and others**³, a case under Representation of Peoples Act, in an election dispute before the Madras High Court, covered by Madras High Court (Election Petition) Rules, 1967, particularly, from Rules 8 and 12, security for costs to be deposited by challan

² 1996(5) SCC 181

³ AIR 1982 SC 558

in High Court, however, deposited in Reserve Bank. It was observed that though the deposit is mandatory, the forum where to deposit is directory and thereby it is a substantial compliance from the deposit made instead before High Court, in Reserve Bank by challan.

16. These two decisions of the Apex Court, in fact, came for consideration before the Division Bench of this Court in **Anajamma vs S. Pushpamma And Another**⁴ and at paras 19 and 20 it was observed therefrom as follows:

“19. The Supreme Court in *M. Karunanidhi v. H.V. Hands*, , considering [Section 117](#) (1) of the *Representation of People Act*, 1951 and the rules framed by the Madras High Court under [Article 225](#) of the Constitution of India held that the requirement regarding making of a security deposit of Rs.2000/- in the High Court is mandatory, the non-compliance of which must entail dismissal of election petition in limine under sub-section (1) of [Section 86](#) of the Representation of People Act. In the above case, the deposit was made as per [Section 17](#) within the period of limitation for filing the election petition but the controversy was whether the deposit made on the strength of pre receipted challis issued by Accounts/Department of the High Court in the Reserve Bank of India to the credit of Registrar of High Court, Madras was substantial compliance or not. The Supreme Court held that the same amount to substantial compliance. But in the case on hand, the deposit was made much beyond the period of limitation for filing the election petition.

20. Rule 5(i) of the Rules, 1995 as extracted above clearly mandates that the petitioner shall deposit with it in cash a sum of Rs.100/- as security for the costs. Rule 5(ii) specifically says that if the provisions of Sub-rule (i) are not complied with, the Election Tribunal shall dismiss the petition. Therefore, a combined reading of Rule 5(i) and (ii) mandate that whenever

⁴ 2001(1) ALD 77(DB)

an election petition is presented, the petitioner shall deposit a sum of Rs.100/- with it. If the petitioner fails to comply with the same, the Election Tribunal shall reject the same for non-compliance. Even as per the finding of the Tribunal, though it was returned for compliance, the same was not complied with within the period prescribed i.e., before expiry of 30 days for presentation of election petition, it is only after expiry of thirty days, the amount was deposited by the petitioner. Once the mandatory provision is not complied with, the Tribunal has to only dismiss the petition. The finding of the tribunal that if the deposit is made before the first appearance of the respondent amounts to compliance, is erroneous and cannot be sustained in view of the law laid down by the Supreme Court in the case of Sharpe (supra). In view of the above discussion, we are of the view that the election petition filed by the respondent No. 1 is liable to be dismissed in limine and point No.1 is accordingly answered in favour of the petitioner.”

17. The Division Bench expression supra, observed that the deposit of Rs.100/- by the petitioner is mandatory and on failure, the election petition shall be rejected for non-compliance by the Tribunal. However, the Tribunal returned the same for compliance and it was not complied even within the statutory time of 30 days (Rule 3 supra) from the date of election to treat as duly complied and thereby for non-compliance within 30 days, even after the return, from the date of original election held, the Tribunal has to dismiss the petition as the only option and thereby the order of the Tribunal holds good on this count in holding the election petition filed by the 1st respondent is liable to be dismissed in limini.

18. A reading of the expressions of the Division Bench of this Court supra, which is binding on this Court directly on the point is very clear, though not in specific terms of Rule 3 has to be read with Rule 5, the requirement to read Rule 5 with Rule 3. Though Rule 5 is mandatory, the mandatory compliance is within one month time from the date of election, while presenting the election petition for the deposit to be made and if not complied within one month from the date of election, it has to be considered as mandatory; and in between to that extent it is directory, as there is one month time to present the election petition.

19. In fact, said expression of the Division Bench came for consideration before another Single Judge of this Court in **Maddipatla Jagan Mohan Rao** supra (that was relied by the lower Court) and it was observed particularly at para 17 of the expression that no clear procedure has been prescribed anywhere in this regard and therefore, the Court below was absolutely right in following the known procedure that too, when it postulates under Rules 3 and 5 of the Rules, 1995 are complied with; so long as filing of the election petition and the money towards deposit made within the total period of 30 days from the date of declaration of the result of the election, the procedure adopted by the Court below cannot, at any stretch of imagination, be faulted. This view supports from the Division Bench expression in **Anjamma** referred supra by

reproducing the para 19 of the above, which is reproduced above. It was also observed in para 20 of the decision in **Maddipatla Jagan Mohan Rao** supra that, a Single Judge of this Court in **P.Leela Rani v. Agency Divisional Officer (Sub-Collector), Bhadrachalam**⁵ held that the mandatory provision should be fully satisfied and non-compliance of the procedure invalidate the election petition. It was further held that the Election Tribunal is a *persona designate*, but it cannot be acted as a Court in strict sense. Though the view taken by the learned Single Judge of this Court in **P.Leela Rani's** case referred supra is unexceptionable, the facts and circumstances of that case are totally different from the facts and circumstances of the present case on hand and the learned Single Judge in **P.Leela Rani's** case referred supra is in fact a party to the judgment rendered by the Division Bench in **Anjamma's** case referred supra. There are two more Single Judge expressions of this Court, (1) C.R.P.No.737 of 2014, dated 27.03.2015 in **Bangaru Sankaraiah v. Talari Pothalaiah**, whereby reproducing Rule 5 of the Rules 1995, it was observed in paras 5 to 9 of the judgment that as per Rule 5(1), which is mandatory to deposit by the election petitioner Rs.100/- in cash as security for costs of the petition and Sub-rule (2) has again in mandatory terms asks for dismissal of the election petition from non-compliance and thereby Rule 5 does not vest any discretion in the election Tribunal to

⁵ 2002(6) ALD 251

entertain the election petition even if for any justifiable cause or reason, the petitioner shall restrain from complying with the said mandate, within the time fixed. The facts in **Bangaru Sankaraiah** supra are that there was strike till it was called off on 20.10.2013, the petition was returned and did not take steps to file lodgment schedule immediately, but filed only on 11.11.2013 and 30 days limitation expired long ago and fee was not paid within 30 days even assuming that petitioner has bonafide case when originally presented the petition, he ought to have been diligent in at least filing lodgment schedule immediately after the strike was over and the discretion exercised by this Court in **Anjamma** supra thereby cannot be extended as the election petition was not duly presented within one month. The single Judge expression supra referring to the Division Bench of this Court in **Anjamma** supra is also very clear that though Rule 5 is mandatory, the compliance of Rs.100/- cash deposit is directory if it is complied with within 30 days, that is a due compliance and it it was not comply within 30 days of election, as time will not extend beyond the 30 days for presenting the election petition from the date of election, the election petition for non-compliance is liable to be dismissed.

20. Coming to the recent Single Judge expression of this Court in **Mohd.Mukhtar Ahmed v Suede Habeeb and**

others⁶ by referring to the expressions of the Apex Court and this Court in **M.Karunanidhi, Anjamma and Bangaru Sankaraiah** supra and by referring to the Rules under Rule 4 of the Act, 1994 and Rules 3 and 5 of the Rules, 1995 supra, by mainly placed reliance upon **M.Karunanidhi** supra, it was observed that though the rule is mandatory regarding the amount in deposit to be made, the election petition to be filed within 15 days as per Rule 2(1) from the date of declaration of result of the election and once within that time the deposit is made, it is a sufficient compliance even instead of cash deposit, the deposit made is by way of Court fee stamps; as in **M.Karunanidhi** supra, instead of depositing before the High Court deposited in Reserve Bank was held a sufficient compliance, by holding to that extent the Rule is directory, though the time of deposit is mandatory and in fact, in **Karunanidhi** supra, Maxwell 12th edition page 314 was relied in saying an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment is obeyed or fulfilled substantially'. The rule of construction is well settled and we need not burden the judgment with citations among citations. It is further observed that it is well established that an enactment in form mandatory, might in substance be directory, and the use of the word "shall" does not conclude the matter. The following passage from **Crawford on 'Statutory Construction' at p.516 brings out**

⁶ 2015(4) ALD 394

the rule. The general rule of interpretation is well-known, and it is but an aid for ascertaining the true intention of the Legislature which is the determining factor, and that must ultimately depend on the context. It is quoted therefrom that "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other."

21. Further earlier expressions of the Court and of the Privy Council, quoted with approval, the interpretation of statutes by **Maxwell 5th Edition page 596**, that when the provisions of a statute relates to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature; it has been the practice to hold such provisions to be directory only; the neglect of them, though punishable, not affecting the validity of the acts done." and the same is quoted with approval also by the Apex Court in **K. Kamaraja Nadar vs**

Kunju Thevar And Ors.⁷ It would be absurd to imagine that a deposit made, either in a Government Treasury or in the Reserve Bank of India, in favour of the Election Commission itself would not be sufficient compliance with the provisions of [Section 117](#) and would involve a dismissal of the petition under [Sections 85](#) or 90(3) of the Representation of People Act. What is essence of the provision contained in [Section 117](#) is that the petitioner should furnish security for the costs of the petition, and should enclose along with the petition a Government Treasury receipt showing that a deposit of one thousand rupees had been made by him, either in a Government Treasury or in the Reserve Bank of India. It is observed in **Mohd. Mukhtar Ahmed's** case that there is a substantial compliance instead of payment in cash or deposit by challan payment of Court fee stamps within the statutory time of 15 days, by which time the election petition must be filed, from the date of result of election.

22. Thus, this expression in one voice say, Rule 5 of the Rules, 1995 which is mandatory to be read with Rule 3 of the Rules, 1995 for compliance within the statutory time of 30 days and if it is not complied within 30 days from date of election, then only it deserves dismissal of the election petition by construing mandatory, as the election petition can be filed within 30 days. It is necessary to refer on the requirement of compliance is mandatory or directory of the

⁷ AIR 1958 SC 687

provision besides what is laid down in the two decisions supra, placed reliance also on **Ashok Lanka and another v Rishi Dixit and others**⁸. In paras 53 to 55 of **Ashok Lanka** it was held that the expression “has to submit an affidavit” ex facie is mandatory in nature and such affidavit necessarily has to deal with the requirements contained in clauses (1) and (2) of Rule 9 of the Rules and if the rule making authority was of the opinion that such an affidavit was required to be filed at a later date and not with an application, it could have said so in express terms as has been done in the case of sub-rule (3) of Rule 9. In fact, all the sub-clauses were to be read a part of affidavit requirements as clauses (3), (4) and (5) would be only by way of undertaking, although the requirements of clauses (3) and (4) can be fulfilled after the grant of licence. The same should appear from the format of the affidavit itself and the question of same is mandatory or directory no doubt depends upon the statutory scheme. It is now well known that, use of the expression ‘shall’ or ‘may’ by itself is not decisive. The Court while construing a statute must consider all relevant factors including the purpose and object, the statute seeks to achieve, as laid down by the earlier expressions in **P.T.Rajan v T.P.M.Sahir**⁹ and **U.P.State Electricity Board v. Shiv Mohan Singh**¹⁰. Furthermore, filing of an affidavit in the prescribed format is a

⁸ AIR 2005 SC 2821(1)

⁹ (2003) 8 SCC 498

¹⁰ (2004) 8 SCC 402

statutory requirement under the Rules. Filing of such an affidavit is necessary as in the event the same on verification is found to be incorrect, not only the deponent can be proceeded against, but his licence would also be liable to be cancelled. Filing of an affidavit under the Rules is therefore, mandatory in character. The other expression of the Apex Court in **Salem Advocate Bar Association, Tamil Nadu v Union of India**¹¹ (three Judge Bench) , which is in relation to the interpretation of the period for filing written statement as per amended provisions of CPC incorporated in Order 8 Rule 1 CPC held in paras 21 and 22 that it is only a directory while further saying the use of the word 'shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory with power of Court to extend the time.

23 If there was a return from the Court or Court not permitted to pay the amount in cash for the known procedure is by lodgment schedule and when the Court resorted to issue lodgment schedule and the deposit made is within the stipulated time of 30 days from the date of election, there is a sufficient compliance. It was no doubt by referring to the Division Bench expression in **Anjamma** supra.

¹¹ AIR 2005 SC 353(1)

24. Now coming to the case on hand, there was no return of the election petition. In para 10 of the Election Petition itself as referred supra, it is stated about filing of form to issue lodgment schedule form ready with money in seeking to deposit, the Tribunal did not ask to pay in cash but accorded permission to deposit, when such is the case the amount is to be deposited in to the Civil Court's deposit is into treasury, through a recognized bank and the bank in which the amount paid as per lodgment schedule and obtained challan to submit before the Tribunal was no doubt on 08.08.2013 and in between there was a day intervening, the fact here remains from the affidavit, not even find place in the original petition averments of the petitioner wanted to tender cash deposit and the Court issued the challan; with all due diligence, the petitioner could have been deposited, if on that day bank time was over, at least on the next day i.e. 07.08.201, but deposited only on 08.08.2013 for not even a case of 07.08.2013 happened to be a holiday to the bank, the fact remains even of the Rule 5 is mandatory, once the lower Court which ought to have returned the petition, if at all, it is not a cash deposit made as contemplated by Rule 5(1), neither returned nor rejected instantaneously, but for issued lodgment schedule on the self same day, that substantiates the factum of cash was chosen to tender, however, the Court issued lodgment to deposit the amount to treasury account through bank and obtain challan, as requested in the

petition, the principle of law herein to be kept in mind is there is intervening act of the Court that only contributed to the delay to say for all purposes cash deposit compliance made on that date, but for at direction of Court to remit through bank challan into treasury to civil Court deposit and there the election petitioner acted as per Court directions.

25. In this regard, the Apex Court's expression on **Jang Singh v. Brij Lal**¹² observed as follows:

"It is, no doubt, true that a litigant can take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information the Court cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of Court should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: 'Actus curiae neminem gravabit'(para 6)"

26. Above expression of the Apex Court from para 6 of its judgment is quoted for approval in paras 7 and 8 of the judgment of this Court in **Bathula Krishna Brahmam v.**

¹² (1966) AIR 1966 SC 1631

Gudipudi Shaik Meera Hassain¹³, which shows in dealing with an application under Order 21 Rule 89 CPC right of the judgment debtor to liquidate the debt after auction sale within the statutory period as under:

“...It is, not denied that the execution clerk calculated the amount to be deposited and the Court accordingly directed the issue of challan and that the petitioner paid the amount accordingly and ultimately it was realized that the deposit on account of the mistake committed by the execution clerk was short of Rs.5/- towards payment of commission payable to the auction purchaser. Therefore, on the statement of facts made by the Court below the mistake if any, was committed by the Execution Clerk and the Court ordered the issue of a challan on the basis of particulars furnished by the Execution Clerk and therefore, it is the Court in supplying the information that committed the initial mistake and as such the Court cannot make the litigant (petitioner) alone responsible for which the Court also is responsible. The fact, that the litigant should have exercised a little more diligence or care, is not the question for consideration and harm to the litigant should not occasion on account of any mistake committed by the Court.”

From the above two expressions, one of the Apex Court that was quoted with approval by this Court as referred supra says there is intervening act of the Court also, that contributed to the result, the party shall not be penalized.

27. From that principle, now coming back to facts, had the Tribunal returned the petition, if not true of cash tendered to

¹³ AIR 1968 AP 309(VOL.55, C.68)

deposit, by issuing challan saying only to deposit. The petitioner could have been if not represented within the statutory time of 30 days of election date under Rule 3 of Rules, 1995, at the earliest could have filed a fresh petition as the return or rejection of the petition is not a bar to the fresh petition from the said non-compliance which was not done by the Court. Thereby it contributed to it, in issuing the lodgment schedule to deposit. Once there is right of filing the petition within 30 days, though the wording from Rule 3 and the wording of Rule 5 is irrespective of the petition is filed on first day or at any time within 30 days along with the petition cash deposit is must from the expressions of this Court supra; time and again in saying the statutory period within which the application to be filed for the compliance of deposit concerned to be construed as directory and after expiry of the statutory time for no other option, if the mandatory provision not complied with same is liable to be dismissed or rejected.

28. Having regard to the above, the order of the lower Court though not in specific terms and by scanning law, once it is meeting from the facts, the provisions of law, the order is sustainable in its result from what is discussed above and thus, for this Court while sitting in revision from the limited scope as laid down by the Apex Court in **Shalini Shyam**

Shetty and another v Rajendra Shankar Patil¹⁴, there is nothing to interfere.

29. Accordingly and in the result, the revision petition is dismissed. There shall be no order as to costs.

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

Dr.B.SIVA SANKARA RAO,J

04.08.2016

Note: L.R. Copy to be marked.
b/o kvrm



¹⁴ 2010(7) scale 428

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO



C.R.P.No.4289 OF 2015

DATE: 04.08.2016

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