

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.4045 & 4080 of 2011

COMMON ORDER:

These two revisions are maintained against the dismissal orders of the lower Court by the respective plaintiffs.

C.R.P.No.4045 of 2011:

Since the 1st defendant died, legal representatives to be brought on record under Order XXII Rule 4 CPC which is from the date of death i.e., 22.12.2009, 90 days period expired by 21.03.2010 if one day to be excluded i.e., 22.03.2010 and the legal representative application was filed on 30.03.2010 by mentioning as if there is delay of 150 days under Section 5 of the Limitation Act though it is only after 90 days there is abatement period of 60 days, if no steps taken within 60 days after 90 days to abate the proceedings in so far as the 1st defendant, if not the cause survived and represented by any of the other defendants to represent the estate. It is the mistake in filing the LR application under Section 5 of the Limitation Act instead of filing application to set aside abatement under Order XXII Rule 9 CPC for the said 8 or 9 days from 21/22-03-2010 to 30.03.2010 leave about one day out of the two days to be excluded even under Section 9 of the General Clauses Act.

Thus, the application from such mistake in mentioning, the dismissal by the lower Court by the impugned order is without proper appreciation of facts when mere wrong mention of a provision not fatal for the Court has to consider under correct provision and thereby the matter is required to be remanded to the lower Court for disposal by virtue of this direction to treat the application instead of under Section 5 of Limitation Act as under Order XXII Rule 9 CPC.

C.R.P.No.4080 of 2011:

So far as the 2nd revision is concerned, it is to rectify the mistake in giving the names and description of some of the proposed legal

representatives or some of the defendants that sought for amendment, and even earlier permitted, mistakes carried out inadvertently and not properly rectified. Once it is brought to the notice of the Court for it is not an amendment to the plaint material averments, much less to change the relief or cause of action much less to the prejudice of the defendants, the names in the cause title description could have been to sub serve the ends of justice allowed to be amended, no doubt for the lack of due diligence by imposing costs. Thereby this matter is also required to be remanded subject to the observations supra for fresh disposal.

Accordingly and in the result, both the revisions are allowed by setting aside the orders of the lower Court and remanded the matters to the lower Court for fresh disposal, according to law.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 29.08.2016
ska