

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4328 of 2014

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the 10th respondent in I.A.No.21 of 2012 in CFR.No.28 of 2012 on the file of the Court of the learned IX Additional District Judge, Wanaparthi, is directed against the orders dated 25.06.2014 in the said interlocutory application.

I have heard the submissions of Sri V.Hanumanth Rao, learned counsel for the revision petitioner/10th respondent, and perused the material record.

The 1st respondent herein, who is the petitioner in the said interlocutory application I.A.No.21 of 2012, though served with notice, did not enter appearance. The other respondents 2 to 10 are stated to be not necessary parties.

The facts, as borne out by the record and as per the submissions of learned counsel for the revision petitioner, in brief, are as follows:

On dismissal of the suit O.S.No.34 of 2008 by the learned Senior Civil Judge, Wanaparthi, the 1st respondent herein filed the first appeal (CFR.No.28 of 2012). However, as a delay of 22 days had occasioned in preferring the said appeal, the interlocutory application I.A.No.21 of 2012 was filed for condonation of the said delay. During pendency of the said interlocutory application, the 1st respondent therein, B.Veera Reddy, died. An application was filed for bringing on record the legal

heirs of the said B.Veera Reddy. Along with the said application, I.A.No.198 of 2013 was filed for condonation of the delay in bringing on record the legal heirs/legal representatives of the said B.Veera Reddy. The first appellate Court, by order dated 04.10.2013, dismissed I.A.No.198 of 2013 and refused to condone the delay. The revision preferred before this Court in CRP.No.4684 of 2013 was dismissed on 06.11.2014 confirming the orders of the first appellate Court dated 04.10.2013 in I.A.No.198 of 2013. Therefore, the 1st respondent herein was unsuccessful in bringing on record the legal representatives of late B.Veera Reddy as party respondents in I.A.No.21 of 2012, which was filed for condonation of the delay in preferring the appeal. However, when the said I.A.No.21 of 2012, which is filed for condonation of delay in preferring the first appeal, was taken up for hearing by the first appellate Court, the revision petitioner/10th respondent therein filed a counter opposing the said application and brought to the notice of the Court below by his counter that B.Veera Reddy, the 1st respondent therein, died and that on dismissal of the application for condonation of delay in bringing on record his legal representatives, the said I.A.No.21 of 2012 stood dismissed as abated against the said 1st respondent, B.Veera Reddy, and that therefore, the application for condonation of delay has to be allowed against the remaining respondents 2 to 10, but not in its entirety. However, on merits and by the orders impugned in this revision, the first appellate Court allowed I.A.No.21 of 2012 and condoned the delay ignoring the fact that the application stood dismissed as abated against the 1st respondent, B.Veera Reddy, on his death and for

not bringing on record his legal representatives. Aggrieved thereof, the 10th respondent in the said interlocutory application filed this revision petition.

Learned counsel for the revision petitioner, while reiterating the chronology of the events, which are stated supra and which are not in dispute, would submit that the application for condonation of delay ought to have been allowed against the respondents 2 to 10 for entertaining the 1st appeal against the said respondents, but not in its entirety, as under law the interlocutory application in I.A.No.21 of 2012 already stood dismissed as abated against the 1st respondent, late B.Veera Reddy.

As already noted above, the 1st respondent herein, who is petitioner in I.A.No.21 of 2012, having not entered appearance, is not opposing this revision. Though the contention that the first appellate Court ought not to have allowed I.A.No.21 of 2012 in its entirety when the 1st respondent therein died even before the orders impugned in this revision were passed, the aspect as to whether the legal representatives of late B.Veera Reddy are already on record representing his estate requires detailed examination by the Court below. The said aspect was not adverted in the orders of the Court below. Though the learned counsel for revision petitioner/10th respondent in I.A.No.21 of 2012 would submit that none of the legal heirs of the said B.Veera Reddy are party respondents to I.A.No.21 of 2012 and none of the respondents in the said application are representing his estate, this Court is of the

considered view that since it is a matter which requires examination on facts of the case, the revision can be allowed and the order impugned in this revision can be set aside and I.A.No.21 of 2012 can be remitted to the Court below for fresh disposal in accordance with the procedure established by law, however, after advertng to the aspect as to whether legal heirs of late B.Veera Reddy, the deceased 1st respondent, representing his estate are already on record.

On the above analysis, the revision petition is allowed and the order dated 25.06.2014 passed in I.A.No.21 of 2012 in CFR.No.28 of 2012 on the file of the Court of the learned IX Additional District Judge, Wanaparthi, is set aside and the said interlocutory application is remitted to the Court below for fresh disposal by keeping in view the aforestated observations in the instant order. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this civil revision petition shall stand closed.

JUSTICE M.SEETHARAMA MURTI

6th December, 2016

Note: Issue CC by 12.12.2016

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