

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

C.C.C.A.M.P.Nos.595 and 750 of 2017 in C.C.C.A.No.206 of 2017
and
C.C.C.A.No.206 of 2017

ORDER: (per Justice Sanjay Kumar)

C.C.C.A.No.206 of 2017 was filed by the defendant in O.S.No.1138 of 2014, a summary suit under Order 37 CPC, on the file of the learned XI Additional Chief Judge, City Civil Court, Hyderabad, aggrieved by the judgment and decree dated 25.06.2015 passed therein. Prior thereto, the trial Court had passed order dated 31.03.2015 in I.A.No.68 of 2014 in O.S.No.1138 of 2014 granting leave to defend the suit subject to the condition of furnishing security equivalent to the suit claim within a time frame. Aggrieved thereby, the defendant filed C.R.P.No.4179 of 2015 before this Court. Significantly, this revision was filed only on 29.09.2015, long after the suit itself was decreed. Further, aggrieved by the said decree, the defendant then filed C.R.P.No.5788 of 2015 before this Court. By common order dated 11.04.2016, this Court opined that a revision under Article 227 of the Constitution would not be maintainable against the judgment and decree passed in the summary suit and that the interest of justice would be met if this Court directed that the revision in C.R.P.No.5788 of 2015 filed against the said decree be converted into a first appeal. The said C.R.P. was permitted to be converted into a first appeal on payment of deficit court fee within a time frame. As a sequel, C.R.P.No.4179 of 2015 stood disposed of.

Upon conversion of the C.R.P.No.5788 of 2015 into C.C.C.A.No.206 of 2017, the appellant/defendant filed C.C.C.A.M.P.No.595 of 2017 therein seeking condonation of the delay of 53 days in the presentation of the appeal. On 21.11.2017, this Court opined that the quantification of 53

days delay appeared to be incorrect. The appellant/defendant then filed C.C.C.A.M.P.No.750 of 2017 seeking condonation of the delay of 133 days in the presentation of the appeal.

In para 3 of both the affidavits filed in support of the condone delay petitions, the appellant/defendant specifically stated as under:

“...Wherein initially the court ordered stay and later on this court directed to file another CRP challenging the same with other relief, on which again on the same decree filed another CRP No.5788/2015 while hearing this Hon’ble Court heard both CRPs together at once and passed common order wherein CRP No.4179/2015 is disposed off and CRP No.5788/2015 is ordered to be converted into regular appeal.”

T.Raghuram, the respondent/plaintiff, appearing as a party-in-person, would assert that the statement made by the appellant/defendant to the effect that this Court directed him to file another C.R.P. is factually incorrect and that this Court never issued such a direction. He would rely on *Pundlik Jalam Patil v. Jalgaon Medium Project*¹, wherein the Supreme Court dealt with a case where an incorrect statement was made in an application seeking condonation of delay. In that context it was observed that an incorrect statement made in the application seeking condonation of the delay is itself sufficient to reject the application without further enquiry as to whether the averments made in the application reveal sufficient cause to condone the delay. The Supreme Court pointed out that a party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on its part by condoning the delay. The respondent/plaintiff would assert that this principle would squarely apply to the present case and pray that the appellant/defendant be non-suited on this ground.

¹ (2008) 17 SCC 448

Perusal of the relevant portion of the affidavits in question reflects that the appellant/defendant categorically stated that this Court had directed him to file another C.R.P. challenging the decree in O.S.No.1138 of 2014. However, perusal of the docket order in C.R.P.No.4179 of 2015, wherein this Court supposedly issued the said direction, reflects that no such direction was ever issued by this Court. It was only recorded by this Court on 17.12.2015 that the learned counsel for the petitioner wanted to take steps against the decree passed on 25.06.2015.

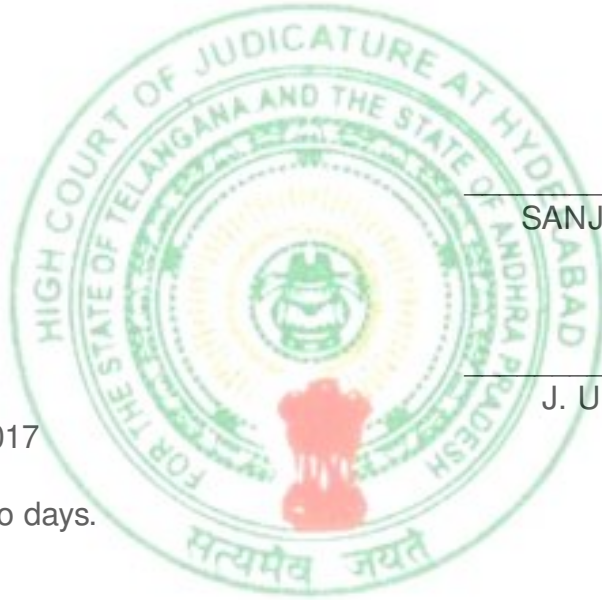
It is clear that the appellant/defendant tried to explain the filing of the second C.R.P., instead of a regular appeal, by stating that it was this Court that had directed him to do so. This factually incorrect statement on his part was made in the context of explaining the delay in the presentation of this appeal. Therefore, he manifestly made a false statement to get over the bar of limitation.

Sri R.Siva Sai Swaroop, learned counsel for the appellant/defendant, has no answer as to why this wrong statement was made in the better affidavit filed in support of C.C.C.A.M.P.No.750 of 2017. Be it noted that this better affidavit was filed owing to the initial affidavit dated 06.10.2017 filed in support of C.C.C.A.M.P.No.595 of 2017 being found to be wanting. Significantly, even the earlier affidavit dated 06.10.2017 contained the very same recital to the effect that this Court directed the appellant/defendant to file another C.R.P. It is therefore clear that despite having an opportunity to correct the mistake committed, the appellant/defendant chose to reiterate the same false statement even in his better affidavit. There is no reason to give any benefit of doubt to the appellant/defendant in this regard as it is not his case that he did not know or understand the contents of the affidavit that he signed.

Be it viewed from any angle, it is manifest that the appellant/defendant sought to use this Court to explain the delay by imputing to it a direction which was never issued. The appellant/defendant is therefore liable to be non-suited for having abused the process of this Court.

C.C.C.A.M.P.Nos.595 and 750 of 2017 are accordingly dismissed. In consequence, C.C.C.A.No.206 of 2017 shall also stand dismissed.

Interim order dated 11.10.2017 passed in C.C.C.A.M.P.No.594 of 2017 shall stand vacated and the said miscellaneous petition shall stand dismissed. Other pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



SANJAY KUMAR, J

J. UMA DEVI, J

Date: 18.12.2017

Note:-

Issue CC in two days.

B/o

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