

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1262 OF 2015

ORDER:

This petition is filed under Section 115 of C.P.C. questioning the order passed by the Junior Civil Judge, Anaparthi on 10th February, 2015 in E.P.No.6 of 2014 in O.S.No.99 of 1990 whereby the trial court held that E.P. is not maintainable as it is barred by limitation.

The petitioner filed the suit and obtained a decree on 9-8-1996 for recovery of amount and later, the respondent herein preferred appeal in A.S.No.31 of 1996 before the Senior Civil Judge Court, R.C.Puram, on 22-11-2001, the appeal was dismissed confirming the judgment and decree passed in the suit. Curiously, the respondent herein did not obtain any interim stay under Order 41 Rule 5 of C.P.C. but the petitioner filed execution proceedings after a lapse of twelve years i.e., on 21-3-2013, though, the decree was obtained on 9-8-1996 and confirmed by the appellate court on 22-11-2001 though no stay was obtained by the respondent herein during the pendency of the appeal. The executing court dismissed the petition holding that it is barred by limitation.

Undisputedly, the limitation for execution of a decree is 12 years from the date of decree and the limitation starts from 9-8-1998 when the trial court passed a decree but not the date on which appeal was dismissed, confirming the decree, since no interim stay was in force during the pendency of the appeal. Before the

trial court, the counsel relied on a judgment of this court reported in *MANAGING COMMITTEE, MASJID E-IBRAHIMA REPRESENTED BY SECRETARY, A.M.YOUSUF HUSSAIN Vs. HYDERABAD ALLWYN METALWORKS LIMITED, NOW CALLED AS VOLTAS LIMITED* ⁽¹⁾ wherein this court held as follows:

"It is not known whether in the instant case, in second appeal, this Court stayed the operation of the judgment and decree of the appellate Court. If there was no stay granted by this Court in second appeal of the judgment and decree of the first appellate Court, then the period of limitation of 12 years for executing the decree started to run from 16-6-1978, the date on which the first appellate Court, decreed the suit."

Based on the principles, the Executing Court i.e., Junior Civil Judge, Anaparthi dismissed the suit as it is barred by limitation.

The main contention of the petitioner is that as the respondent did not file any petition under Order 41 Rule 5 C.P.C., the petitioner did not take any steps to execute the decree as there is every possibility of filing of such application on filing execution petition but that is not a ground to extend benefit under Section 15 (1) of the Limitation Act. He also relied on the judgment reported in *CHATLA LINGANNA vs. A.P.STATE ELECTRICITY BOARD REP. BY THE CHIEF ACCOUNTANT ELECTRICITY REVENUE OFFICER, NIRMAL* ⁽²⁾ towards minimum pilferage and minimum consumption charges but was resisted on the ground that it is barred by limitation. But, in the said suit, after levy of pilferage amount and actually estimated consumption charges, an appeal is provided to the

¹ 2006 Law Suit (A.P.) 235 page 783

² 1988 (2) A.L.T. 688

Superintendent Engineer and accordingly appeal was filed but without obtaining any stay. Those facts are totally different, though no stay was obtained claim is not barred by limitation and the benefit under Section 15 (1) of Limitation Act has no application before the statutory authority under Electricity Act. Hence, the principle laid down in the above judgment is not applicable to the present case.

Admittedly, the decree was obtained on 9-8-1996 by the petitioner when an appeal in A.S.No.31 of 1996 was filed by respondent before the Senior Civil Judge, Ramachandrapuram and dismissed on 22-11-2001 but no stay was in force under order 41 Rule 5 of C.P.C. in such a case, limitation starts from the date of decree i.e., 9-8-1996 but not from the date of dismissal of the appeal, the petitioner is not entitled to the benefit under Section 15(1) of the Limitation Act. Hence, the principle laid down by this court in the judgment referred 1st supra (*MANAGING COMMITTEE, MASJID E-IBRAHIMA REPRESENTED BY SECRETARY, A.M.YOUSUF HUSSAIN Vs. HYDERABAD ALLWYN METALWORKS LIMITED, NOW CALLED AS VOLTAS LIMITED*) is directly applicable and thereby, the order of the trial court does not suffer from any illegality warranting interference by this court while exercising powers under Section 115 of C.P.C. as such interference is called for only when the court did not exercise the jurisdiction that confer on it or when the court exercise jurisdiction exceeding its limit.

But here, in the present case, no such circumstance is brought to the notice of this court and thereby, in view of the limited

scope of jurisdiction of this court under Section 115 of C.P.C., the order does not call for any interference and consequently, this Civil Revision Petition is liable to be dismissed.

Accordingly, this Civil Revision Petition is dismissed. No costs.

As a sequel to the disposal of this revision, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 24-4-2017.

Dvs.



HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 24-4-2017.

Dvs