

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.2547 of 2017

ORDER:

The defendant in O.S.No.574 of 2003, on the file of the Court of the Principal Junior Civil Judge, Karimnagar is the petitioner in the present revision filed under section 115 of the Code of Civil Procedure.

2. In the present revision challenge is to the order dated 06.03.2012 passed by the said Court in I.A.No.845 of 2008 filed by the respondent herein under Section 5 of the Limitation Act seeking condonation of delay of 450 days in filing the petition under Order 9 Rule 9 of the Code of Civil Procedure for restoration of the suit, which was dismissed for default on 21.02.2006.

3. Heard Sri V.Ravi Kiran Rao, learned counsel for the petitioner and Sri P.V.Narayana Rao, learned counsel for the plaintiff/respondent apart from perusing the material available before the Court.

4. The respondent herein instituted the present suit for declaration of title and for perpetual injunction in respect of an extent of 0-04 guntas, 56 square yards of house plot situated at Seetharampur of Karimnagar District. The learned Judge, dismissed the suit for default by way of an order dated 21.12.2006. Thereafter, on 16.04.2008, the respondent herein filed an application under the provisions of Order 9 Rule 9 of the Code of Civil Procedure praying for restoration of the suit and the first respondent herein also filed I.A.No.845 of 2008 under Section 5 of the Limitation Act seeking condonation of delay of 450 days in filing the said application. The defendant/petitioner herein resisted the said application by way of filing

counter affidavit. The learned Principal Junior Civil Judge, Karimnagar, by way of an order dated 22.08.2008 dismissed the said application.

6. Aggrieved by the said order, the first respondent herein filed CRP.No.824 of 2009 before this Court. This Court, by way of an order dated 10.12.2009 allowed the said revision filed by the respondent herein and remanded the matter for fresh consideration to the Court of the learned Principal Junior Civil Judge. After the said remand, the learned Principal Junior Civil Judge, Karimnagar, by way of the order under challenge allowed I.A.No.845 of 2008, condoning the delay in filing the application under the provisions of Order 9 Rule 9 of the Code of Civil Procedure.

7. It is contended by the learned counsel for the petitioner that the order under challenge is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Section 5 of the Limitation Act. It is further contended that the learned Principal Junior Civil Judge grossly erred in allowing the application without taking into consideration the contradictory stance taken by the respondent plaintiff. It is further submitted by the learned counsel that as the respondent herein failed to show sufficient cause, the Court below ought to have dismissed the application and ought not to have permitted the respondent herein to prosecute the suit.

8. On the contrary, it is contended by the learned counsel for the plaintiff/respondent herein that there is no error nor there exists any infirmity in the impugned order and in the absence of the same, the questioned order is not amenable for any correction under Section 115 of the Code of Civil Procedure. It is further contended by the learned counsel that since the Court below exercised its discretion and condoned the delay,

no interference of this Court is warranted. It is also the submission of the learned counsel that since the valuable rights in respect of the subject property are involved, the Court below is perfectly justified in allowing the application. According to the learned counsel, the order passed by the Court below is strictly in accordance with the object behind Section 5 of the Limitation Act.

In support of his submissions and contentions, learned counsel for the respondent places reliance on the judgment of the Hon'ble Apex Court in *BHAGMAL v. M.P.CO-OP MKTNG AND CONSUMER FED. LTD*¹ and the judgments of this Court in *GANTA NARSIMHA RAO v. GANTA KANAKAMMA*² and *V.LINGA REDDY v. V.RAM REDDY*³.

9. The information available before this Court manifestly discloses that earlier when the Court below dismissed the application filed by the respondent herein, respondent herein filed CRP.No.824 of 2009 before this Court and this Court by way of an order dated 10.12.2009 allowed the said revision and remanded the matter and also permitted the parties to lead evidence to substantiate their case. After such remand, the respondent herein filed Ex.P.2 document and the same was allowed to be marked by virtue of an order passed by the Court below in I.A.No.927 of 2010.

10. A perusal of the order under challenge shows that the Court below though observed the delay as exorbitant, condoned the delay taking into consideration the substantial rights of the parties and the property involved. In this context, it may be appropriate to refer to the judgments cited by the learned counsel for the respondent.

¹ AIR 2004 SC 1230

² 2006 (3) ALD 667

³ 2011 (6) ALT 225

11. In *BHAGMAL (supra 1)*, the Hon'ble Apex Court held that when the appellate authority exercised its discretion while condoning the delay, the same would not be amenable for any correction by the High Court.

12. In the case of *GANTA NARSIMHA RAO (supra 2)*, this Court categorically held that once the Court accepts the explanation as sufficient and it is the result of positive exercise of discretion, normally the superior Court should not disturb such finding, much less, in revisional jurisdiction. It is further held that the Rules of limitation are not meant to destroy the rights of the parties and they are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly and that the object of providing a legal remedy is to repair the damage caused by reason of legal injury and the law of limitation thus founded on public policy. This Court also held that the approach of the Courts in condoning the delay should be liberal.

13. In the case of *V.LINGA REDDY (supra 3)*, this Court, following the judgment of the Hon'ble Apex Court in the case of *N.BALAKRISHNAN v. M.KRISHNA MURTHY*⁴, held that the discretion exercised on the application made, in the facts and circumstances of the case, cannot be termed as arbitrary or perverse warranting interference. In the said case, though there was delay of 5082 days in filing application under Order 9 Rule 13 of the Code of Civil Procedure, this Court condoned the delay.

14. In the present case, obviously taking into consideration, the substantial rights of the parties the learned Principal Junior Civil Judge condoned the delay and exercised the discretion under the provisions of Section 5 of the Limitation Act. Therefore, this Court, in exercise of the powers conferred under Section 115 of the Code of Civil Procedure is not

⁴ (1998) 7 SCC 123

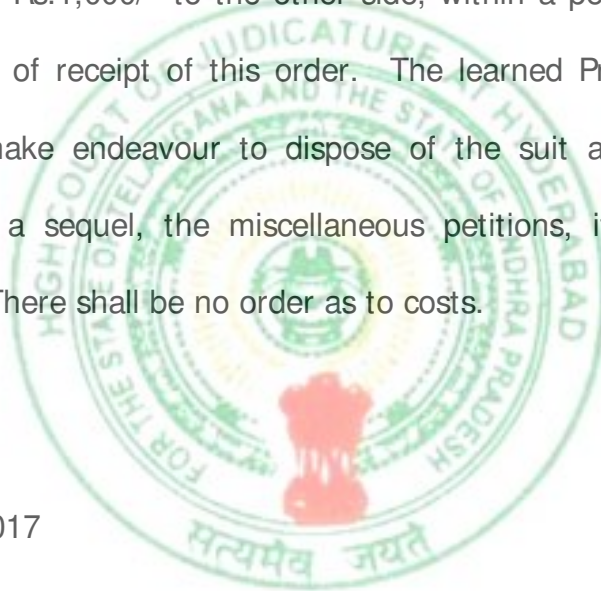
inclined to meddle with the order under challenge. It is also significant to note that in the impugned order the learned District Judge also imposed costs of Rs.1,000/-. This Court deems it appropriate, in the facts and circumstances of the case to enhance the said quantum of costs of Rs.5,000/-.

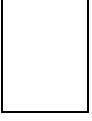
15. For the aforesaid reasons, the Civil Revision Petition is dismissed. However, the amount of costs imposed by the Court below is enhanced from Rs.1,000/- to Rs.5,000/-. Out of the said costs, Rs.4,000/- to be paid to Mr.Y.Neelakanta Reddy, advocate attached to the office of Sri V.Ravi Kiran Rao and Rs.1,000/- to the other side, within a period of four weeks from the date of receipt of this order. The learned Principal Junior Civil Judge shall make endeavour to dispose of the suit as expeditiously as possible. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J⁵

Date: 03.08.2017

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



C.R.P.No.2547 of 2017

Dated 03.08.2017

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