

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.908 OF 2011

ORDER:

This civil revision petition is filed under Section 115 of C.P.C questioning the order in I.A.No.185 of 2006 in O.S.No.1781 of 1983 dated 19.10.2010 passed by the XI Junior Civil Judge, City Civil Court, Secunderabad.

The petitioners filed I.A.No.185 of 2006 under Section 5 of the Limitation Act to condone delay of 3291 days in filing petition to restore the main suit, which was dismissed for default. It is alleged that in the year 1983, the first petitioner filed O.S.1781 of 1983 and the said suit was decreed on 07.12.1987 in favour of the petitioners granting permanent injunction against the defendant no.1 and mandatory injunction against defendant nos. 2 & 3. Thereafter, the defendants in the suit preferred an appeal in A.S.No.5 of 1990 and I.A.No.45 of 1995 before the Additional Chief Judge, Secunderabad and the said appeal was allowed on condition that the defendant no.1 has to pay Rs.500/- to the respondents and on compliance, judgment and decree of lower court will be set-aside and the matter will be remanded to the lower court for fresh disposal, after giving opportunity to both the parties to adduce evidence.

When the suit was remanded to the Trial Court at the stage of issue of notice to the plaintiffs through court, the plaintiffs did not receive any notice at any point of time either from the court or from the defendant, thus the petitioners have no knowledge about the said fact to attend before the court and failed to appear before the court and did not lead their evidence. In the result, the suit was dismissed on 28.02.1997.

It is the case that, when the first petitioner visited MRO office, Maredpally, they informed that the suit was dismissed in the trial court in the year 1997, thus, the first petitioner immediately enquired about the proceedings which were held in the absence and further, she came to know that in the above said suit, one Sri Z. Veerabhadra Rao, Advocate appeared on behalf of the petitioners and on 28.02.1997, as there was no representation from the plaintiffs side, cost of Rs.500/- was not paid and the suit was dismissed with costs. It is the petitioners further case that, they have never appointed or not signed on Vakalat authorising said Veerabhadra Rao to appear on behalf of the petitioners in the said suit actually and the petitioners do not have any knowledge about the proceedings of the lower court for consideration of the said matter as per the appellate court order and the first petitioner is illiterate widow and had no legal knowledge about the court proceedings, not able to consult her previous counsel late Sri S.A. Gaffoor as he died and the first petitioner did not approach any other advocate, but, when the proceedings were held before the appellate court, the petitioners have engaged said Sri Z. Veerabhadra Rao, Advocate on behalf of the petitioners to appear and represent the petitioner only in the appellate court, but the petitioners never engaged the said Z. Veerabhadra Rao to conduct trial in the suit. Therefore, dismissal of the order was not within the knowledge of the petitioners, prayed to set-aside the order in I.A.No.185 of 2006 in O.S.No.1781 of 1983 dated 19.10.2010 passed by the XI Junior Civil Judge, City Civil Court, Secunderabad.

The second respondent filed counter, denying material allegations, *inter alia* contending that her husband V. Ramachandra Rao expired on 15.07.1998 and thereafter, she was not aware of several proceedings in the Courts. Only in 2006 when a writ petition was filed by her husband

in W.P.No.4393 of 1996 filed against MRO was listed for hearing in the High Court, she contacted her advocate and thereafter, she filed required affidavits in the said petitions drafted by her advocate. She submitted that she was not aware of the suit O.S.No.1781 of 1983 or A.S.No.5 of 1990 referred in the affidavits. She further submitted that she got herself impleaded as 2nd petitioner in W.P.No.4393 of 1996 and filed reply affidavit drafted by her advocate. The narration of facts in the affidavit gives a clear picture as to how the petitioner, her husband Ananthram and her father in law Subbarayappa filed petitions with frivolous allegations one after the other for the last 17 years and the present application is yet another proceeding to continue the harassment. It is submitted that the petition filed after 10 years of dismissal of the suit on 28.02.1997 itself speaks volumes of the frivolous nature of the petitions and the petitioners went on filing several suits in the civil courts and cases in criminal courts and also filed revenue proceedings before the revenue authorities, successfully changing the entries in the revenue records and without informing the High Court about the dismissal of the suit and without impleading second respondent's husband as a party, colluded with MRO, they have obtained orders from the High Court to get possession of the property. Further, the second respondent filed additional counter on 12.03.2010 through their advocate E. Kumaraswamy, wherein, it was stated that the suit was filed in the year 1983 and it was decreed exparte by order in I.A.No.45 of 1995 in A.S.No.5 of 1990 and remanded the suit to lower court. The third respondent also filed separate counter denying material petition averments.

Upon hearing arguments of both the counsel, the Trial Court dismissed the petition refusing to condone abnormal delay of 3291 days in filing petition to restore the main suit.

Aggrieved by the order of the Court below, the present petition is filed reiterating the grounds urged before the Court below, while contending that the Trial Court did not consider the specific grounds urged in the affidavit filed along with the petition to condone abnormal delay of 3291 days and that, it is evident from the record that the said Z. Veerabhadra Rao was engaged for limited period for prosecuting the case and appearing before the Court below and no notice was served on the petitioner's counsel on remand of O.S.No.1781 of 1983. Thereby, there is delay in filing a petition under Order IX Rule 9 C.P.C. But, the Trial Court did not appreciate the contention in proper perspective and committed an error in dismissing the petition.

Learned counsel for the petitioner while reiterating the grounds urged in the petition, drawn the attention of this Court to the order in W.P.No.4393 of 1996, marked as Ex.R-2 before the Court below and order in W.A.M.P.No.62 of 2009, marked as Ex.P-3. It is contended that the petitioners had no knowledge about dismissal of the suit and prayed to condone delay of 3291 days in filing petition to restore the main suit.

It is the specific case of the petitioners from the beginning that the first petitioner filed O.S.1781 of 1983 and the said suit was decreed on 07.12.1987 in favour of the petitioners granting permanent injunction against the defendant no.1 and mandatory injunction against defendant nos. 2 & 3. Thereafter, the defendants in the suit preferred an appeal in A.S.No.5 of 1990 and I.A.No.45 of 1995 before the Additional Chief Judge, Secunderabad and the said appeal was allowed on condition that the defendant no.1 has to pay Rs.500/- to the respondents and on

compliance, judgment and decree of lower court were be set-aside and the suit was remanded to the lower court for fresh disposal, after giving opportunity to both the parties to adduce evidence. Even after remand, the counsel Sri Z. Veerabhadra Rao appeared before the Trial Court. But, the contention of the petitioners is that, the petitioners did not engage the services of Sri Z. Veerabhadra Rao, but engaged Sri S.A. Gaffoor, who died even during pendency of the suit before the Trial Court. But, Sri Z. Veerabhadra Rao whom the petitioners engaged in the Appellate Court continued his vakalat and appeared before the Trial Court also.

When once Sri Z. Veerabhadra Rao was authorized under Order III Rule 1 C.P.C, he is entitled to continue to prosecute the proceedings either on remand or in the appeal also. Such authorization is sufficient to create relationship of agent and principal to appear before the appellate court and lower court. Therefore, the allegation that they did not engage the counsel Sri Z. Veerabhadra Rao is not a ground to condone abnormal delay of 3291 days in filing a petition under Order IX Rule 9 C.P.C.

The other ground raised before this Court is that, no notice was served on remand of suit O.S.No.1781 of 41983 to the Trial Court, but appearance of Sri Z. Veerabhhadra Rao representing the petitioners is an illegality and on that basis, when no notice was served, dismissal of suit is illegal. But, notice can be served either on the counsel appearing in the court or on the parties in view of Order III Rule 3 C.P.C.

Order III Rule 3 C.P.C permits service of process on the recognised agent or on an Advocate of the party shall be effectual as if the same had been served on the party in person unless the court otherwise directs.

In this case, Sri Z. Veerabhadra Rao was engaged as a counsel in the appeal, who in turn appeared before the Trial Court and notice was served on the counsel Sri Z. Veerabhadra Rao and in such case, the

services of notices on Sri Z. Veerabhadra Rao on his appearance is sufficient in compliance of Order III Rules 1 & 4 C.P.C.

Order V C.P.C deals with summons to be either to settle issues or for final disposal and according to it, the court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly, provided that, in every Suit heard by a court of small causes, the summons shall be for the final disposal of the suit.

Hence, in the service of notice on the counsel Sri Z. Veerabhadra Rao, is in compliance of Order III & V C.P.C, no notice need be served on the parties i.e. the petitioners herein. Therefore, on this ground, abnormal delay of 3291 days cannot be condoned.

O.S.No.1781 of 1983 was filed in the year 1983, i.e almost 35 years old and the proceedings were terminated 20 years ago by the Trial Court, the petitioner filed revision against such an order passed in a petition to condone delay and successfully obtained interim order and thus there was delay in disposing of the matter for another 8 years successfully without putting an end to the litigation. Now, the petitioners requested this Court to restore the suit which was dismissed about more than 15 years back on the grounds referred supra. But, none of the grounds raised in the petition are sufficient to condone abnormal delay of 3291 days in filing a petition under Order IX Rule 9 C.P.C.

The Supreme Court in **Lanka Venkateswarlu (D) by L.Rs. v State of A.P. and Ors.**, held as follows:

“We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as “liberal approach”,

justice oriented approach”, “substantial justice” cannot be employed to jettison the substantial law of limitation, especially in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any *lis* between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.”

In view of the law declared by the Apex Court, the Courts cannot jettison substantive law of limitation on the concept of substantial justice or complete justice and set-aside the order accepting any cause shown by the petitioner as ‘sufficient cause’.

Here, in this case, the Trial Court rightly held that, no cause, muchless, sufficient cause is shown to condone delay of 3291 days to file a petition under Order IX Rule 9 C.P.C, for restoration of the suit and this Court while exercising power under Section 115 C.P.C cannot interfere with such findings, as the Trial Court recorded such findings based on material.

The jurisdiction of this Court under Section 115 C.P.C is limited and this Court can interfere with the order passed by the Court below when the subordinate Court passed an order exercising jurisdiction which is vested on it by law or to have failed to exercise the jurisdiction so vested or to have vested or to have acted in exercise of jurisdiction illegally. Here, in this case, no grounds are raised. Therefore, the revision under Section 115 C.P.C deserves to be dismissed, as it lacks merits.

In the result, the civil revision petition is dismissed, affirming the order the order in I.A.No.185 of 2006 in O.S.No.1781 of 1983 dated 19.10.2010 passed by the XI Junior Civil Judge, City Civil Court, Secunderabad.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:28.02.2018

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