

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2111 of 2018

ORDER:

Challenging the order, in I.A.No.933 of 2014 in O.S.No.2537 of 2006 dated 09.01.2018 passed by the II Additional Senior Civil Judge, Ranga Reddy District at LB Nagar, allowing the application filed, under Order IX Rule 9 CPC, to restore the suit setting aside the dismissal order dated 02.09.2014, the present revision petition is filed.

The respondent - plaintiff filed the suit for declaration of title and other consequential reliefs, including recovery of possession of suit schedule property. It is alleged in the affidavit that, when the suit is coming up for trial and it was posted to 26.08.2014, the respondent - plaintiff and her counsel appeared before the Court below for filing affidavit in lieu of examination-in-chief, under Order XVIII Rule 4(2) CPC, but the Presiding Officer was on leave and the suit was posted to 02.09.2014; the date of adjournment was wrongly noted as 03.09.2014; on 03.09.2014, when she attended the Court, she came to know that the suit was not listed on that day, on enquiry, she came to know that the suit was dismissed for default on 02.09.2018 which was beyond her control to appear before the Court on the date of adjournment and requested to set aside the dismissal order exercising power under Order IX Rule 9 CPC.

Petitioners - defendants filed counter denying material allegations while admitting that the respondent - plaintiff filed suit for recovery of possession and the suit was posted for trial to 26.08.2014 but contended that respondent – plaintiff and her counsel were present on the date of hearing to file the affidavit in lieu of chief-examination; and after availing leave by the Presiding Officer, the suit was posted to 02.09.2014. They also denied the other allegations contending that she was not prevented by sufficient cause and in paras 5 to 8 they raised several other allegations about past history of the proceedings, including suit in O.S.No.2537 of 2006, and its dismissal, I.A.No.933 of 2014 and CMA, which are not relevant for deciding the present controversy between the parties and that there is a long delay in prosecuting the main suit itself and requested to dismiss the petition.

Upon hearing the argument of both counsel, the Trial Court, having satisfied that the respondent - plaintiff was prevented by sufficient cause to appear before the Court on 02.09.2018, set aside the order of dismissal on payment of costs of Rs.200/- to District Legal Services Authority, Ranga Reddy District and restored the suit to file.

Aggrieved by the orders passed by the Trial Court, the present revision is filed raising several contentions mostly on the ground of delay. It is also contended that the Court below did not exercise its discretion vested under Order IX Rule 9 CPC properly and in accordance with the settled principles of

law; the Trial Court also failed to consider the efforts made by the respondent – plaintiff to drag the suit for a decade so as to deprive the petitioners – defendants to enjoy the possession of property with clear title; no cogent reason was assigned by the Trial Court to accept the contention of the respondent – plaintiff that she was prevented by sufficient cause as on the date of dismissal of the suit; and, thereby, the order passed by the Court below is erroneous and requested to set aside the order in I.A.No.933 of 2014 in O.S.No.2537 of 2006 dated 09.01.2018.

During hearing, learned counsel for the petitioners - defendants reiterated the contention while highlighting how the suit proceedings were dragged and also about earlier litigation in O.S.NO.1839 of 2005 on the file of Principal Junior Civil Judge, Ranga Reddy District etc. and also contended that long delay is caused by the respondent – plaintiff in completion of trial of the case is a nascent ground to be considered while exercising discretion under Order IX Rule 9 CPC and requested to set aside the order of the Trial Court as she was not prevented by sufficient cause.

Sri Chalapathi Rao, learned counsel for the petitioner, contended that the date was wrongly noted which was a sufficient cause which prevented the respondent – plaintiff from appearing before the Court below to prosecute the case as it was beyond reasonable control and placed reliance on the judgment of the Delhi High Court in **Wazirabad Multi**

Purpose Cooperative Society Limited v. Rajan; HBR Transport Co; Mani Ram¹. He also contended that the delay in prosecution cannot be taken into consideration while deciding an application under Order IX Rule 9 CPC; and, at best, the Court is required to decide whether the petitioner was prevented by sufficient cause on the date of adjournment which leads to passing of dismissal order and placed reliance on **Garuda Sakuntala v. A.V.M.Jagga Rao**²

On the strength of the principles laid down in two judgments, the cause shown is sufficient and requested to set aside the order passed by the Trial Court in I.A.No.No.933 of 2014 in O.S.No.2537 of 2006 dated 09.01.2018 while dismissing the revision petition filed under Article 227 of the Constitution of India.

As seen from the allegations in the affidavit, filed along with the petition before the Trial Court that on the date of adjournment i.e. 02.09.2014, the respondent – plaintiff could not appear before the Court along with counsel and along with affidavit under Order XVIII Rule 4(2) CPC as the date of adjournment was wrongly noted as 03.09.2014 on the earlier date i.e. 26.08.2014, when the Presiding Officer was on leave. Therefore, the specific cause/reason asserted in the affidavit is noting of wrong date of adjournment. The scope of Order IX Rule 9 was examined in **Rajan; HBR Transport Co; Mani Ram** (1 supra). The Delhi High Court held that the cause

¹ 2007 LS (DEL) 342

² 2000(6) ALT 396 (DB)

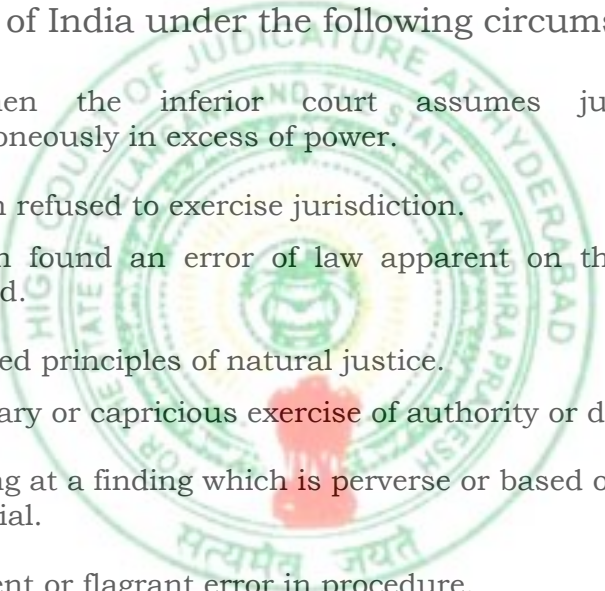
shown by the petitioner i.e. wrong noting of date which prevented the petitioner from appearing on the date of adjournment is a sufficient cause. The judgment is not binding precedent but it has persuasive value.

Coming to the facts of the present case, the petitioner before this Court did not deny listing of the suit on 26.04.2018 and availing of leave by the Presiding Officer on the specific date but denied the contention of the respondent – plaintiff about wrong noting of date of adjournment. This is substantiated by the statement of the respondent - plaintiff. Though no further proof is effected, of wrong noting date of adjournment, the Trial court accepted the cause as sufficient cause shown by the respondent – plaintiff and exercised discretionary power under Order IX Rule 9 CPC.

In the present case, the counsel contended that the Court did not exercise discretionary power as per settled principles of law.

This civil revision petition is filed under Article 227 of the Constitution of India. Such jurisdiction can be exercised only in limited circumstances. Before deciding the real controversy in dispute, I would like to discuss scope of jurisdiction of this court under Article 227 of the Constitution of India. This court can exercise revisional jurisdiction under Article 227 of the Constitution of India in limited circumstances and nature of the jurisdiction is supervisory over the subordinate courts or the tribunals under the control

of the Court. The power of revision under Article 227 of the Constitution of India is limited to find out whether the order under challenge, passed by the subordinate court or tribunal within their jurisdictional limits and the main intention of exercising both administrative and judicial control under Article 227 of Constitution of India is to keep them within the bounds of their jurisdiction and not to allow them to transgress from their jurisdictional limits, but not otherwise. The Court can exercise jurisdiction under Article 227 of the Constitution of India under the following circumstances:

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- “a) When the inferior court assumes jurisdiction erroneously in excess of power.
 - b) When refused to exercise jurisdiction.
 - c) When found an error of law apparent on the face of record.
 - d) Violated principles of natural justice.
 - e) Arbitrary or capricious exercise of authority or discretion.
 - f) Arriving at a finding which is perverse or based on no material.
 - g) A patent or flagrant error in procedure.
 - h) Order resulting in manifest injustice.
 - i) Error both on facts and law or even otherwise.”

Similarly, the Court cannot exercise its discretion under Article 227 of the Constitution of India in the following circumstances:

- "a) Where the only question involved is one of interpretation of deed;
- b) On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;
- c) To correct erroneous exercise of jurisdiction, as a Court of revision;

- d) To set aside an intra vires finding of the fact, except where it is founded on no material or is perverse;
- e) To correct an error of law, not being an error apparent on the face of the record;
- f) To interfere with the intravires exercise of discretionary power, unless it is violative of principles of natural justice;
- g) The Court shall not interfere on a merely technical ground which would not advance substantial justice."

In view of the judgment of the Supreme Court in **State (N.C.T. Of Delhi) v. Navjot Sandhu@ Afsan Guru³**, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the Tribunals can exercise power within its bounds and shall not exercise whimsically and contrary to the principles of settled law. But, in the present case, the cause shown by the petitioner is that the counsel wrongly noted date of the adjournment. This Court accepting such contention that wrong noting of adjournment disabled the respondent herein to appear on the date of adjournment and it is sufficient cause since it is beyond her control to appear on the date of adjournment, persuaded by the law declared by the Delhi High Court. The Court below did not exercise its discretion according to the settled principles of law or whimsically but it is only to do complete justice to the parties.

The other ground urged before this Court is that the delay petition is not disposed of which shows the conduct of the petitioner, but it is irrelevant in view of the law declared

³ (34)2005 (3) ALT (CrI.) 125 (SC)

by the Division Bench in **Garuda Sakuntala** (2 supra). Therefore it needs no further elaboration.

Hence, I find no ground warranting interference of this Court in the impugned order dated 09.01.2018 passed by the Trial Court in I.A.No.933 of 2014 in O.S.No.2537 of 2006. In view of the limited jurisdiction conferred on this Court under Article 227 of the Constitution of India and since the Trial Court did not transgress its jurisdictional limits or violated principles of natural justice or exercised its jurisdiction whimsically, I find no ground to interfere. The Trial Court is directed to dispose of the suit, in accordance with law, in any event not later than six months from the date of receipt of a copy of the order.

With the above observations, the Civil Revision Petition stands disposed of. Miscellaneous petitions pending, if any, shall stand dismissed.

M.SATYANARAYANA MURTHY,J

Date:29.10.2018
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