

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4062 OF 2018

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed by the defendant/petitioner - proposed appellant in CMA(SR) No.150 of 2016 assailing the order of return, dated 14.03.2018, of the learned Senior Civil Judge, Kandukur of Prakasam District, whereby the said Court returned the proposed CMA with the following return order:

“How this Court has got jurisdiction to file CMA U/Sec. 5 of Limitation Act. To be clarified with provision of law.”
(Reproduced verbatim)

2. I have heard the submissions of the learned counsel for petitioner/defendant at the stage of admission. I have perused the material record.

3. The facts and events noticeable from the submissions and the material record, in brief, are as follows:

“The petitioner is a defendant in O.S.No.7 of 2011 filed by the respondent - plaintiff on the file of Junior Civil Court, Kanigiri. The said suit was decreed *ex parte* on 17.03.2011. Thereafter, the respondent - decree holder filed E.P.No.49 of 2012 for attachment of the property of the defendant/petitioner - judgment debtor. The petitioner - defendant is contesting the said Execution Petition. At that stage, the petitioner - defendant filed a petition in I.A.No.328 of 2014 on the original side, apparently seeking a relief to set aside the *ex parte* decree, dated 17.03.2011, passed in the afore-stated suit, after condonation of delay of

1034 days in filing the said petition. On contest, the learned Judge of the trial Court dismissed the said petition, on 03.08.2015. Aggrieved thereof, the petitioner herein earlier preferred C.R.P.No.4934 of 2015 before this Court. At the hearing of the said CRP learned counsel for the petitioner - defendant sought permission from this Court to withdraw the CRP reserving liberty to the petitioner herein to pursue the remedy of appeal (CMA). This Court, by order, dated 04.12.2015, permitted the petitioner to withdraw the revision petition reserving liberty sought for. Thereafter, the petitioner - defendant preferred the proposed CMA before the Court of the learned Senior Civil Judge, Kandukur. At the stage of scrutiny, the office of the said Court returned the CMA(SR) with various objections. From time to time, the objections raised by the office of the Court below were complied with. Finally, the Court below returned the CMA(SR) with the office objection afore-stated. However, without re-presenting the CMA(SR) after due compliance of the said objection, the present revision is filed *inter alia* stating that the Court below ought to have entertained the CMA(SR) in view of the orders of this Court in the afore-stated C.R.P.No.4934 of 2015.”

4. Learned counsel for the petitioner - defendant submits that in view of the orders of this Court in the afore-stated CRP the Court below ought to have entertained the CMA(SR) and disposed of the CMA on its merit instead of returning the same with the office objection afore-stated on the point of jurisdiction and maintainability of the CMA SR that was filed unaccompanied by an application under the relevant provisions of the Limitation Act for condonation of delay in filing the said CMA. He would also further submit that in view of the fact that the petitioner herein had mistakenly filed and prosecuted the afore-stated CRP before this Court

instead of preferring an appeal (CMA) before the Court below, the petitioner-defendant is also entitled to the benefit of section 14 of the Indian Limitation Act which provides for relief in case of selection of a wrong remedy and wrong forum. Finally, the learned counsel for the petitioner made a request to dispose of the present revision reserving liberty to the petitioner herein to re-present before the Court below, the returned CMA(SR) after duly complying with the objection/s taken by the office of the Court below, and with a direction to the Court below to consider the same and pass a reasoned order either registering or rejecting to register the CMA to enable the petitioner to proceed further in the matter.

5. Having regard to the afore-stated facts, chronology of events and submissions, this Court finds that the present CRP can be disposed of with appropriate directions to meet the ends of justice.

6. Accordingly, the revision petition is disposed of reserving liberty to the petitioner to re-present before the Court below, the returned CMA (SR) within two weeks from the date of receipt of a copy of this order, however, after duly complying with the office objection/s, dated 14.03.2018, taken by the office of the Court below. It is made clear that on the petitioner re-presenting the CMA(SR) the Court below shall hear the learned counsel appearing for the petitioner-defendant/proposed appellant and pass an appropriate reasoned order either entertaining the appeal or rejecting the same to enable the petitioner-defendant/proposed appellant to take further follow up action in the matter. It is made clear that the petitioner/proposed appellant is at liberty to file an application now under appropriate provisions of the Indian Limitation Act for condonation of delay in preferring the CMA, if so advised and so desires;

and, is further entitled to take all the pleas, which the law permits, at the time of hearing before the Court below on the aspect of maintainability of the CMA.

There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

M.SEETHARAMA MURTI, J

July 27, 2018
MD

Note: The office is directed to return the original CMA(SR) papers to the learned counsel for the petitioner under proper acknowledgment as per the procedure.

