

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.A.No.1 of 2018 in Civil Revision Petition No.3755 of 2013

and

Civil Revision Petition No.3755 of 2013

COMMON ORDER :

Heard Sri K.G. Krishna Murthy, Senior Counsel appearing for Sri K. Ramamohan, counsel for petitioners; and Sri P. Laxma Reddy, Senior Counsel appearing for Sri K.L.N. Swamy, counsel for respondents in the Civil Revision Petition.

2. This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.02.07.2013 passed in I.A.No.228 of 2013 in I.A.No.435 of 2000 in Unregistered Civil Miscellaneous Appeal (C.M.A.) on the file of the District Judge, Mahabubnagar.

3. The petitioners herein are defendant nos.1, 3, 4 and legal representative of 2nd respondent.

4. One Muthyala Yenamma (died) filed O.S.No.18 of 1996 on the file of the District Munsif, at Gadwal, Mahabubnagar District for declaration of title and recovery of possession of the property which is mentioned in the Schedule to the suit, and for other reliefs.

5. Written Statement was filed by defendant nos.1 to 4 opposing the suit claim.

6. Issues were framed on 23.06.1997, and the General Power of Attorney Holder of the plaintiff was also partly examined in Chief on 07.07.1999.

7. Thereafter, in spite of giving several chances, PW.1 did not appear and give further evidence. So, the suit was dismissed for default on 20.08.1999.

8. The plaintiff, viz., Muthyala Yenamma, then filed I.A.No.417 of 1999 invoking Order IX Rule 9 of Civil Procedure Code, 1908 to restore the suit.

9. After contest, the said I.A. was dismissed on 01.10.1999.

10. Challenging the same, the respondent nos.1 and 2, who were legal heirs of deceased-plaintiff and who had died in the meantime, filed un-numbered Civil Miscellaneous Appeal (C.M.A.) before the District Judge, Mahabubnagar with a delay of (114) days, and also filed I.A.No.435 of 2000 to condone the said delay invoking Section 5 of the Limitation Act, 1963.

11. On 13.10.2004, the said I.A.No.435 of 2000 was dismissed for default.

12. Thereafter, respondent nos.1 and 2 filed I.A.No.1257 of 2004 to restore I.A.No.435 of 2000 in the un-numbered Civil Miscellaneous Appeal, and the said application was allowed on payments of costs of

Rs.300/- on 03.08.2007, and I.A.No.435 of 2000 was restored to the file of the District Judge, Mahabubnagar.

13. Again, the respondent nos.1 and 2 did not pursue the I.A.No.1257 of 2004, and so it was dismissed for default on 21.10.2010.

14. They then filed I.A.No.228 of 2013 under Section 5 of the Limitation Act, 1963 to condone the delay of (778) days in filing the application for restoration of I.A.No.435 of 2000.

15. In the affidavit filed in support of the said application, the following reason was stated :

“I have filed the above C.M.A. with a petition to condone the delay of 114 days vide I.A.No.435/2000, but the said I.A. was dismissed for default on 21.10.2010, which fact could not be known to me, as it was under impression that the case might have been adjourned from time to time, as it was posted from time to time for a decade. I lost my cell phone, as such I also lost the phone number of my advocate as such I could not contact my advocate. Meanwhile, I along with 2nd petitioner have been to Gangavathi on contract works to attend repairs to Thungabadra River Canals. Recently I came to Gadwal and on enquiry, one of the respondent no.7 died. When I happened to visit Mahabubnagar contacted my advocate recently in the last week of December, 2012 and came to know about the dismissal of the I.A.No.435 of 2000 on 21.10.2010. I also informed my advocate that R.7 died, on that my advocate advised to collect the details of L.Rs. of R.7. As such, the delay occurred to file restoration petition for I.A.No.435/2000, the delay is not intentional, but only due to above said reason.”

16. This application was opposed by petitioners who pointed out that several opportunities were given to respondent nos.1 and 2 to contest the proceedings, but they did not do so and they were not entitled to any indulgence from the Court. They also contended that they were very much present at Gadwal only and were attending to agricultural works and their pleading that they went to Gangavathi on contract works to attend repairs to Thungabadra River Canal is a false plea.

17. By order dt.02.07.2013, the Court below allowed the said application after referring to the contentions of both sides and the decisions cited by them. It observed that the question of condonation of delay is one of discretion and has to be decided on the basis of facts of the case at hand; that such facts would vary from case to case and it would depend upon what the breach of fundamental right and the remedy claimed are, and when and how the delay arose; that the suit was dismissed for default under Section XVII Rule 3 of Civil Procedure Code, 1908, and had not been decided on merits; and I.A.No.435 of 2000, which was filed for condonation of delay, was kept pending for more than a decade; and in view of the averments made in the affidavit filed by respondent nos.1 and 2 that they had gone to Gangavathi of Karnataka State to attend contract works and did not have knowledge of the dismissal of I.A.No.435 of 2000, they should be given another opportunity by condoning the delay of (778)

days on the respondent nos.1 and 2 paying costs of Rs.3,000/- to petitioners.

18. Assailing the same, the present Civil Revision Petition is filed.

19. Initially, this Court granted interim suspension on 17.08.2013 in (CRP.MP.No.5024 of 2013) I.A.No.1 of 2013 in CRP.No.3755 of 2013, and the said order was extended from time to time.

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20. I.A.No.1 of 2018 was filed by respondents to vacate the order dt.27.08.2013 passed in (CRP.MP.No.5024 of 2013) I.A.No.1 of 2013 in CRP.No.3755 of 2013.

21. The counsel for petitioners contended that the original plaintiff had, through General Power of Attorney, tried to prosecute the suit but the General Power of Attorney did not appear in the Court for giving evidence, and the suit came to be dismissed for default for non-prosecution on 20.08.1999 after giving several opportunities to the original plaintiff; that I.A.No.417 of 1999, which was filed to restore the suit invoking Order IX Rule 9, was also dismissed on the ground that a regular first appeal has to be filed, since the dismissal of the suit is under Order XVII Rule 3 of Civil Procedure Code, 1908 and not under Order IX Rule 9 of Civil Procedure Code, 1908; that the appeal preferred under Order 43 of Civil Procedure Code, 1908 by respondent nos.1 and 2 to the District Judge, Mahabubnagar was with a delay of (114) days and they had filed I.A.No.435 of 2000 for

condonation of the delay which was again dismissed for default on 13.10.2004 and though the said I.A. was restored on payment of costs on 03.08.2007 in I.A.No.1257 of 2004, the respondent nos.1 and 2 did not pursue it, and it was again dismissed for default on 21.10.2010; that I.A.No.228 of 2013 was filed to restore I.A.No.435 of 2000 with a delay of (778) days; and the Court below ought not to have condoned the said period of delay even on payment of costs keeping in view the negligence of respondent nos.1 and 2 in pursuing the proceedings and the several opportunities given to them which were not availed of.

22. Sri Sri P. Laxma Reddy, Senior Counsel appearing for Sri K.L.N. Swamy, counsel for respondents in the Civil Revision Petition, however supported the order passed by the Court below and contended that respondent nos.1 and 2 belong to poorer sections of society, and the reasons assigned by them for the condonation of delay, viz., loss of cell phone and the contact number of the Advocate and the respondents having to go to Gangavathi on contract works to attend repairs to Thungabadra River Canal, were rightly accepted by the Court below.

23. I have noted the submissions of both sides.

24. From the facts narrated above, it is apparent that respondent nos.1 and 2, who are legal representatives of the original plaintiff, filed un-numbered Civil Miscellaneous Appeal (C.M.A.) before the

District Judge, Mahabubnagar on 29.02.2000 along with I.A.No.435 of 2000 seeking condonation of delay of (114) days in filing the said appeal, and the said I.A. was dismissed for default on 13.10.2004. Though the said I.A. was restored on 03.08.2007 on payment of costs in I.A.No.1257 of 2004, it was again dismissed for default. They then filed I.A.No.228 of 2013 under Section 5 of the Limitation Act, 1963 to condone the delay of (778) days in seeking to set aside the order dt.21.10.2010 passed in I.A.No.435 of 2000. Having been given three opportunities, the respondent nos.1 and 2 did not avail of them. It is not their case that they were not aware as to who their Advocate was in Mahabubnagar, and they cannot claim that they or their family members could not contact their Advocate so many times or for such a long period between 2000 and 2010.

25. In my considered opinion, the conduct of respondent nos.1 and 2 is negligent and they are the people who are responsible for keeping the matter pending between 29.02.2000 till 02.07.2013. They cannot blame the Court for the delay in dismissal of those applications, viz., I.A.No.435 of 2000 and I.A.No.1257 of 2004 and I.A.No.228 of 2013. Their claim that they were under an impression that the matter would be adjourned from to time, cannot be accepted.

26. Existence of sufficient cause is a condition precedent for exercise of power to condone the delay and what counts is not the length of delay but sufficiency of the cause. This was held in **State**

(NCT of Delhi) vs. Ahmed Jaan¹ and Permon Bhagavathy Devaswom, Perinadu Village vs. Bhargavi Amma (Dead) by L.Rs and others².

27. As held in **P.K. Ramachandran vs. State of Kerala and another³**, the Law of Limitation may harshly affect a particular party but it has to be applied with its entire rigor when the statute so prescribes, and the Courts have no power to extend the period of limitation on equitable grounds.

28. In the instant case, since respondent nos.1 and 2 have been totally callous and negligent in pursuit of their remedies, they were not entitled to grant of any indulgence. So the order passed by the Court below condoning the delay of (778) days in seeking to set aside the order 21.10.2010 dismissing I.A.No.435 of 2000, cannot be sustained; and the petitioners cannot be allowed to be harassed by respondent nos.1 and 2 in this manner.

29. Accordingly, the Civil Revision Petition is allowed. The impugned order is set aside. I.A.No.228 of 2013 in I.A.No.435 of 2000 in Unregistered Civil Miscellaneous Appeal (C.M.A.) on the file of the District Judge, Mahabubnagar against the order dt.01.10.1999 in I.A.No.417 of 1999 is dismissed. No order as to costs.

¹ (2008) 14 S.C.C. 582

² (2008) 8 S.C.C. 321

³ AIR 1998 SC 1997

30. Consequently, I.A.No.1 of 2018 which was filed by respondents to vacate the order dt.27.08.2013 passed in (CRP.MP.No.5024 of 2013) I.A.No.1 of 2013 in CRP.No.3755 of 2013, is dismissed.

31. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 12.06.2019

Ndr/*

