

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.490 of 2019

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908, is filed by the revision petitioners/plaintiffs, challenging the order, dated 08.01.2019, passed in I.A.No.10 of 2016 (old I.A.No.392 of 2015) in O.S.No.76 of 2005 by the Telangana State Waqf Tribunal, Hyderabad (for short 'the Tribunal') wherein, the petition filed by the revision petitioners/plaintiffs, under Section 5 of the Limitation Act, 1963, to condone the delay of 2168 days in filing the petition to set aside the order dated 18.11.2009, passed in the subject suit, was dismissed.

2. Heard the learned counsel for both the sides and perused the record.

3. Learned counsel for the petitioners/plaintiffs would contend that the counsel on record for the petitioners/plaintiffs before the Court below died and on several requests made by the petitioners/plaintiffs with the family members of the counsel to return the case file, they returned the file recently on 23.11.2015. Thereafter, the petitioners/plaintiffs engaged another counsel, who informed them that the suit was dismissed for default on 18.11.2009. Then the petitioners/plaintiffs filed the subject Interlocutory Application before the Tribunal showing justifiable cause for delay that they received the case file recently from the family members of the deceased counsel and also the 2nd petitioner/plaintiff, who filed affidavit on their behalf, was suffering from illness. Though there are sufficient reasons to condone the

delay, the Tribunal erroneously dismissed the subject Interlocutory Application. It is further submitted that the suit is for mandatory injunction restraining the respondents/defendants from interfering with the right of passage from the gate of respondents/defendants to reach the subject suit graveyard in which public interest is involved and no prejudice would be caused to the respondents/defendants if they are restrained. The petitioners/plaintiffs are ready to proceed with the subject matter of the suit expeditiously. The easementary rights of the revision petitioners/plaintiffs and also the entire community would be defeated and infringed by the respondents/defendants, if the petitioners/plaintiffs are not given opportunity and ultimately prayed to set aside impugned order and consequently allow the subject Interlocutory Application. In support of his contentions, learned counsel relied upon the following decisions:

- 1) *K.Subbarayudu Vs. Special Deputy Collector (Land Acquisition)*¹
- 2) *State of Karnataka Vs. Y.Moideen Kunhi (Dead) by LRs*²,
- 3) *G.Ramegowda, Major etc. Vs. The Special Land Acquisition Officer, Bangalore*³,
- 4) *N.Balakrishnan Vs. M.Krishnamurthy*⁴ and
- 5) *Collector, Land Acquisition, Anantnag Vs. Mst.Katiji*⁵.

¹ (2017) 12 SCC 840

² (2009) 13 SCC 192

³ 1988 AIR (SC) 897

⁴ 1998(7) SCC 123

⁵ 1987 AIR (SC) 1353.

4. On the other hand, learned counsel for the respondents/defendants would contend that the petitioners/plaintiffs did not show any justifiable cause to condone the inordinate delay and they made false averments in the affidavit. It is further contended that the petitioners/plaintiffs got filed another suit vide O.S.No.27 of 2014 before the same Tribunal with the same allegations seeking similar relief and the said suit was also dismissed for default. Thereafter, the revision petitioners/plaintiffs filed the subject Interlocutory Application. The subject suit was dismissed for default nearly one year after filing chief-examination affidavit of the revision petitioner/plaintiff. The proceedings were within the knowledge of the petitioners/plaintiffs. The Court below, while dealing with the subject interlocutory application, had elaborately dealt with the contentions raised and answered the same against the petitioners/plaintiffs and ultimately prayed to sustain the impugned order and dismiss the Civil Revision Petition. In support of his contentions, learned counsel relied upon decisions of the Hon'ble Apex Court in Ashok Kumar Vs. District Magistrate, Basti⁶ and D.Gopinathan Pillai Vs. State of Kerala⁷.

5. In view of the above rival contentions, the point that arises for determination in this revision is as follows:

“Whether the delay of 2168 days occurred in filing the petition to set aside the order dated 18.11.2009, passed in O.S.No.76 of 2005, can be condoned and consequently, the impugned order is liable to be set aside?”

⁶ 2012 AIR SCW 1652

⁷ AIR 2007 SC 2624

6. Admittedly, the suit in O.S.No.76 of 2005 is filed for mandatory injunction and it was dismissed for default on 18.11.2009 by the Tribunal. The contention of the revision petitioners/plaintiffs is that their counsel on record before the Court below died and thereafter, they made several requests to the family members of the deceased counsel to return the case file but they did not return in time stating that the case file was misplaced. Immediately after receiving the case file, the petitioners/plaintiffs filed the subject Interlocutory application. If that is so, the petitioners/plaintiffs should have filed the affidavit of any one of the family members of the deceased counsel. It is also averred in the affidavit of the petitioners/plaintiffs that the plaintiff No.2/deponent of the affidavit suffered from ill-health and underwent treatment, but he did not file any medical record to substantiate the same. It is also relevant to state that the suit was dismissed for default one year after filing of the chief examination affidavit of the petitioner/plaintiff. It is also borne by the record that after dismissal of the subject suit, the petitioners/plaintiffs got filed similar suit in O.S.No.27 of 2014 before the Tribunal with identical pleadings seeking identical relief. The pleadings urged and the relief sought for in the subsequent suit in O.S.No.27 of 2014 are identical in nature with that of the subject suit. Under these circumstances, it cannot be said that the petitioners/plaintiffs have no knowledge of the dismissal of the subject suit for default on 18.11.2009. Further, it is pertinent to state that the Wakf Board is not made as a party to the suit, which has substantial interest in the subject matter of the suit nor any effort is made by the Wakf Board raising the dispute in respect of the suit schedule property

till date. The counsel for the petitioner/plaintiff on record passed away one year after filing of the chief examination affidavit of plaintiff, which reflects that the petitioners/plaintiffs, did not evince any interest to proceed with the case for further chief-examination, marking of the documents as well as cross-examination, in the subject suit which was ultimately dismissed for default. The Tribunal elaborately dealt with the contentions raised on behalf of the petitioners/plaintiffs and justified in declining the relief holding that no sufficient cause has been shown by the petitioners/plaintiffs to condone the delay. The decisions relied upon by the learned counsel for the petitioners/plaintiffs are distinguishable from the facts and circumstances of the case on hand.

7. It is apt to state that the supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution of India is limited to see that a Court or Tribunal subordinate to it functions "*within the bounds of their authority*" and to ensure that law is followed by such Court or Tribunal by exercising jurisdiction vested in them and not declining to exercise the jurisdiction which is vested in them. Apart from the above, High Court can interfere in exercise of its power of superintendence, when there has been a patent perversity in the orders of the Courts or Tribunal subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted. In the instant case, neither there is patent perversity in the order under challenge nor the Tribunal travelled beyond its jurisdiction in passing the impugned order. There is no legal infirmity in the order under challenge. There is nothing to take a different view. The contentions raised by the revision

petitioners/plaintiffs in this Civil Revision Petition does not merit consideration. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

8. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this CRP, shall stand closed.

13th February, 2020
Vvr

Dr. SHAMEEM AKTHER, J

