
(2008) 03 AP CK 0008
In the Andhra Pradesh High Court
Case No : C.R.P. No. 8 of 2008

Boda Venkataramanamma and Others APPELLANT
Vs
I. Satyavathamma and Another RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Citation : (2009) 1 ALD 31 : (2008) 2 ALT 587

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : S. Sri Ramachandra Murthy, for the Appellant; K. Hara Gopal, for the Respondent

Final Decision : Allowed

Judgement

G. Yethirajulu, J.—This Revision Petition has been filed by the petitioners in I.A. No. 88 of 2004 in O.S. No. 102 of 1996 on the file of the Senior Civil Judge, Tadepalligudem.

2. The petitioners are defendants 2 to 4 in the above suit filed for specific performance of an agreement of sale executed by their mother. They were set ex parte and the ex parte decree was passed on 11-10-2002. The petitioners came to know about the ex parte decree after receipt of the notices in the E.P. filed on the basis of the said decree. The petitioners contended that though they engaged an Advocate to represent their case, he failed to represent the same, therefore, they were set ex parte and after knowing about the decree after receipt of the summons in the E.P., they filed an Application to set aside the ex parte decree and another Application to condone the delay of 409 days in filing the said Application, covered by I.A. No. 88 of 2004. The Respondents opposed the Application and the lower Court dismissed the said Application. Being aggrieved by the same, the defendants preferred the present Revision Petition challenging the order of the lower Court.

3. In the affidavit filed in support of the petition, the petitioners mentioned that

they engaged an Advocate to represent their case and the written statement was filed. The Advocate informed that he would intimate the date when the evidence is going to be recorded. When the chief-examination of P.Ws. 1 and 2 is over, the counsel for the petitioners reported no instructions, therefore, the Court treated the cross-examination of the petitioners as nil. Later P.W. 3 was examined in chief and the matter was posted for hearing of the Advocate and they were set ex parte and ex parte decree was passed on 11-10-2002. They further mentioned that after receipt of the notice, they approached the previous Advocate and asked about the E.P. notice. Then, he reported the petitioners about the ex parte decree. The previous Advocate of the petitioners did not cross-examine P.Ws. 1 to 3 and did not oppose the marking of the exhibits. The petitioners are expected to know about the progress of the suit through their counsel only. Since the counsel did not inform them, they could not make their appearance.

4. It is the specific version of the petitioners that when their Advocate reported no instructions on the date of examination of the plaintiffs' witnesses, the learned Senior Civil judge ought to have proceeded with the cross-examination or write a letter to them about the progress of the trial, but he failed to do so.

5. The lower court observed that it is a matter of 1996. The respondents 2 and 3 and the petitioners are residents of Eluru. The suit was filed subsequent to the death of the mother of the petitioners. The second defendant was residing at Pippara. The counsel for the defendants filed a memo reporting no instructions on 24-9-2002 after the chief-examination of P.Ws.1 and 2. The second respondent was set ex parte in the suit long back after making publication. The petitioners did not explain the delay. The lower Court further observed that the petitioners are not properly prosecuting the case and they failed to evince any interest from the date of filing of the written statement till they were set ex parte. The reasons given in the affidavit are not cogent and convincing and the petitioners did not even approach the Court in an identified matter and the burden is on the petitioners to explain the delay, but they are not expected to forget the suit proceedings for years together. There are no bona fides in the petition. The Court does not find any merits in the petition. Accordingly, the petition was dismissed.

6. The learned Counsel for the Revision Petitioners submitted that the petitioners are the ladies and they have no male assistance. Taking advantage of that, the plaintiffs obtained the document and used the same as an agreement of sale and that their Advocate did not inform them about the adjournment days and passing of the ex parte decree and they came to know about the passing of the ex parte decree only after the filing of the E.P. The delay in preferring the Application is not intentional and it could not be filed on account of lack of knowledge, therefore, he requested to set aside the order passed by the lower Court by condoning the delay in filing the Application to set aside the ex parte decree.

7. The learned Counsel for the petitioners cited the following judgments in

support of his contention that in the absence of proper explanation for the delay, the petitioners are not entitled for any opportunity to contest the suit:

In Malkiat Singh and Another Vs. Joginder Singh and Others, , the Appellant engaged a counsel to defend them in the civil suit but the counsel pleaded no instructions. The trial Court did not issue any notice to the appellants, who were admittedly not present on the date when their counsel reported no instructions.

Under those circumstances, the Supreme Court held that the trial Court, should have in the interest of justice, allowed that Application and proceeded with the case from the stage when the counsel reported no instructions since the appellants cannot be said to be at fault, therefore, they should not be made to suffer.

In Nalla Lalchaiah v. Abdul Razak 2004 (2) An. W.R. 63, this Court expressed similar view in the case where the Advocate reported no instructions.

8. The learned Counsel for the respondents opposed the Application by contending that the petitioners failed to give proper explanation as to why it could not be filed immediately after passing of the decree and as it is a belated Application, the lower Court rightly dismissed the Application, therefore, he requested to dismiss the Revision Petition.

9. The Court ought to have, immediately after the counsel reporting no instructions, issued notice to the petitioners intimating about the reporting of the no instructions by their Advocate and asking them either to cross-examine the witnesses or engage another Advocate to proceed with the trial But the Court in a hasty manner passed the ex parte decree. Whenever an Advocate of a party reports no instructions, it is the practice of the Court intimating the same to the party, but the Court failed to do so.

10. Though there was considerable delay in filing the Application, the petitioners expressed their inability to attend the Court for want of communication. Though the counsel stated that he dropped a letter to the petitioners, there is no proof that they received the letter.

In the light of the above circumstances, I am of the view that an opportunity must be given to be defendants to defend their case.

11. In the result, the Revision petition is allowed. The order of the lower Court, dated 12-10-2007 in I.A. No. 88 of 2004 in O.S. No. 102 of 1996 is set aside. I.A. No. 88 of 204 is allowed by condoning the delay of 409 days on payment of costs of Rs. 1,000/- to the respondents-plaintiffs within one month from the date of receipt of this order. The lower Court is directed to pass appropriate orders in the petition filed to set aside the ex parte order and give opportunity to the defendants to proceed with the trial from the stage at which the Advocate reported no instructions. The petitioners are directed to co-operate with the lower Court by cross-examining P.Ws. 1 to 3 and adduce evidence, if any, on their behalf. If the petitioners resort to playing delaying tactics, the lower court is

at liberty to pass appropriate orders according to law.