
(2001) 08 AP CK 0162

In the Andhra Pradesh High Court

Case No : C.R.P. No's. 719, 1046 and 1105 of 1999

Chintapalli Lakshma Rayudu

APPELLANT

Vs

Dasari Narayana Rao and Others

RESPONDENT

Date of Decision : 14-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 151
Limitation Act, 1963 — Section 5

Citation : (2001) 08 AP CK 0162

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : V.S.R. Anjaneyulu, for the Appellant; N. Krishna Rao, for the Respondent

Judgement

P.S. Narayana, J.—These three Civil Revision Petitions arise out of the orders passed in I.A.No.1194/98 in O.S.No.647/87 and also I.A.No.1196/98 in O.S.No.647/87 on the file of III Additional Senior Civil Judge, Vijayawada.

2. The plaintiff is the Revision Petitioner in C.R.P.Nos.1046/99 and 1105/99 and the 2nd defendant is the Revision Petitioner in C.R.P.No.719/99. For the purpose of convenience, the parties will be referred to as arrayed in the suit.

3. The 6th defendant filed I.A.No.1194/98 in O.S.No.647/87 u/s 5 of the Limitation Act requesting the Court to condone the delay of 138 days in filing an application to set aside the exparte decree. The 6th defendant also filed another application I.A.No.1196/98 in O.S.No.647/87 under Order 9 Rule 13 and u/s 151 C.P.C. to set aside the exparte decree passed against him on 30-4-1998 in the interests of justice. The court below by an order dated 26-10-1998 in allowed the application I.A.No.1194/98 in O.S.No.647/87 on payment of costs of Rs.300/- to the plaintiff on or before 2-11-1998 and likewise the other application I.A.No.1196/98 in O.S.No.647/87 filed by the 6th defendant also was allowed on 1-12-1998 on payment of costs of Rs.500/- to the plaintiff. Aggrieved by the said orders, these Civil Revision Petitions are filed.

4. The plaintiff filed C.R.P.No.1046/99 against the order in I.A.No.1194/98 and C.R.P.No.1105/99 as against the order in I.A.No.1196/98 in O.S.No.647/87 on the file of III Additional Senior Civil Judge, Vijayawada. The 2nd defendant filed C.R.P.No.719/99 as against the order made in I.A.No.1194/98 in O.S.No.647/87 on the file of III Additional Senior Civil Judge, Vijayawada. Likewise, these three Civil Revision Petitions are interconnected and can be disposed of by a common order for the purpose of convenience.

5. The 6th defendant, as already stated supra, filed I.A.No.1194/98 and I.A.No.1196/98 in O.S.No.647/87 on the file of III Additional Senior Civil Judge, Vijayawada for condoning the delay of 138 days in filing the application to set aside the exparte decree and also an application to set aside the exparte decree. The 6th defendant had averred that he usually stays at Madras or at Hyderabad being a Producer, Director and Distributor of Cinemas and he came to know only on 14-9-1998 that he was set exparte in the suit on 27-4-1998 and he also came to know that an exparte order was passed against him on 13-4-1998 and that he had not received any communication from his Advocate after the trial of the suit and when he came to Vijayawada on the particular day, he was informed by his tenant by name Rupesh H. Ajmer that tom-top was made on 9-9-1998 under the supervision of the Court Amin, Vijayawada attaching his immovable properties in E.P.No.179/98 and he came to know about the passing of the exparte decree only on that day and the attachment by tom-tom was informed by S. Subba Rao and V. Srinivas also to him and hence there was no negligence or intentional fault on his part and requested to condone the delay of 138 days and also to set aside the exparte decree to enable him to contest the matter. The plaintiff had filed a detailed counter denying all the allegations. The court below after appreciating the facts and circumstances came to the conclusion that on payment of costs the delay has to be condoned and the exparte decree passed against him is liable to be set aside. The plaintiff, aggrieved by the said orders, preferred C.R.P.No.1046 and 1105 of 1999 whereas the 2nd defendant, aggrieved by the order made in I.A.No.1194/98 had filed C.R.P.No.719/99.

6. Here itself I may point out that it is not known why the 2nd defendant had filed a separate C.R.P. though he is not in any way aggrieved of the orders passed by the court below. It may also be relevant to note that the plaintiff also had taken a stand that the decree is not an exparte decree, but it is a decree made on merits after recording the evidence and hence the remedy pursued by the 6th defendant is misconceived remedy and the applications to condone the delay and to set aside the exparte decree are not at all maintainable.

7. Sri V.S.R. Anjaneyulu, the learned counsel representing the Revision Petitioner in C.R.P.Nos.1046 and 1105 of 1999 had contended that the suit is based on the strength of a promissory note and the 2nd defendant had participated in the trial and in fact the suit was decreed on merits. The counsel for the 6th defendant who had filed the applications before the court below for condoning the delay and to set aside the exparte decree dated 30-4-1998, reported no instructions on

4-2-1998. The learned counsel also had submitted that both u/s 5 of the Limitation Act and under Order 9 Rule 13 C.P.C., a finding relating to the sufficient cause has to be recorded and the court below had failed to do so. The learned counsel had placed reliance on Chigurupalli Suryanarayana Vs. The Amadalavalasa Co-operative Agricultural Industrial Society Ltd., and contended that the finding by the Court on sufficiency of cause, is mandatory. The learned counsel also had placed reliance on M/s.KALAGARA HARI BABU Vs. EDUPUGANTI KRISHNA RAO (died) AND ANOTHER 2 and had submitted that the Judgment is not an exparte Judgment and the decree is not an exparte decree and hence the remedy is only by way of appeal and the applications filed by the 6th defendant are incompetent.

8. Sri Krishna Rao, the learned counsel representing the 6th defendant in the suit had contended that in matters of this nature, the Court must be liberal and the 6th defendant is a retired partner from the firm and always the normal rule is that the matter should be decided on merits and as far as the 6th defendant is concerned it is only an exparte decree and merely because some elaborate Judgment was made since the 2nd defendant had contended that the matter, that will not amount to Judgment on merits as far as the 6th defendant is concerned. The learned counsel had placed reliance on MALKIAT SINGH AND ANOTHER Vs. JOGINDER SINGH AND OTHERS 3; 1996(2) A.L.D. 350; SUSHILA NARAHARI AND OTHERS Vs. NANDAKUMAR AND ANOTHER 5; RAJESWARA INDUSTRIES Vs. STATE BANK OF HYDERABAD 6; ESWARAIHAH Vs. S.A.GAFFOOR AND ANOTHER⁷. The learned counsel also contended that the Court has no power to impose any additional conditions except regarding imposition of costs while setting aside the exparte decree.

9. Sri T. Ravi Kumar, the learned counsel representing the 2nd defendant also, who is the Revision Petitioner in C.R.P.No.719/99, had submitted that these applications filed by the 6th defendant are not bonafide.

10. It is no doubt true that all the facts and circumstances and the conduct of the party may also be taken into consideration in matters of this nature. The explanation given by the 6th defendant in the application to condone the delay and also in the application to set aside the exparte decree is that he is a busy film Producer and Director and normally he will be at Madras and Hyderabad and he was not aware of the proceedings and he came to know when he was informed about the same. Though there is no specific finding on the aspect of "sufficient cause", the court below had exercised the discretion with a view to give opportunity to the 6th defendant also to contest the matter. In C.R.P.No.1726/99 dated 28-8-2001, I had expressed the view that normally matters should be decided only on merits unless it is inevitable and the conduct of the party is so blameworthy. Here is a case where the discretion had been exercised by the court below, but in the facts and circumstances of the case and also in equity, I am of the considered opinion that the Court must always have the power to impose such terms and conditions so as to make the parties to get

ready and no doubt such terms and conditions must not be onerous or impossible of performance.

11. Hence, in the facts and circumstances of the case, I deem it fit to make the following order in equity:

1. that the 6th defendant shall deposit the suit costs and also 1/4th of the decretal amount within a period of six weeks from the date of receipt of this order;

2. the court below is directed to proceed with the matter day to day, immediately after such deposit is made and complete the trial of the suit by the end of November 2001 without fail and the parties are directed to cooperate in this regard since the matter is a very old one and it is a suit on the strength of a promissory note;

3. the orders of the court below are modified to the extent indicated above.

12. C.R.P.719/99 is hereby dismissed and Civil Revision Petitions 1046 and 1105/99 are partly allowed, but in the facts and circumstances of the case, each party to bear their own costs.