
(2003) 02 AP CK 0034

In the Andhra Pradesh High Court

Case No : CRP No's. 1325, 1456 and 1518 of 2002

Dilip Mehra and Another

APPELLANT

Vs

Visakha Industries Limited and Others

RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 148

Citation : (2003) 3 ALD 728 : (2003) 3 ALT 421 : (2003) 1 APLJ 226

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : S. Venkateswar Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

G. Rohini, J.—These three Civil Revision Petitions are directed against the orders in I.A. No. 2278 of 2001, I.A. (SR) No. 1321 of 2002 and I.A. (SR)No. 1322 of 2002 respectively. Since all the said applications arise out of O.S.No. 19 of 2000 on the file of the Court of the 1st Additional Chief Judge, Secunderabad the same are heard together and decided by this common order.

2. The petitioners in all these revision petitions are the defendants who suffered an ex parte decree. The plaintiff who is the 1st respondent in all the Revision Petitions tiled the suit for recovery of Rs. 8,73,165.26 Ps alleged to be due from the 1st defendant-Company. The 2nd defendant was the Managing Director of the 1st defendant-Company, whereas the defendants 3 and 4 are the Directors. The suit was decreed ex parte on 13.6.2000. The defendants 2 and 4 filed an application under Order 9 , Rule 13 of CPC to set aside the ex parte decree along with another application u/s 5 of the Limitation Act to condone the delay in seeking to set aside the ex parte decree. Similar applications were filed by the 1st defendant-Company. The Trial Court by order dated 12.10.2001 dismissed the applications filed u/s 5 of the Limitation Act and consequently dismissed the applications under Order 9, Rule 13 of Civil Procedure Code. Challenging the said orders C.R.P. Nos. 4899/2001; 4900/2001 and 4901/ 2001 are filed in this Court.

Having heard all the parties this Court by a common order dated 29.11.2001 allowed the Civil Revision Petitions and condoned the delay holding that the costs awarded by the Trial Court in the ex parte decree, which were already deposited in pursuance of the interim orders granted pending the revision petitions, shall be treated as costs for condoning the delay and the respondent/ plaintiff was permitted to withdraw the same. In pursuance thereof, the applications filed under Order 9, Rule 13 of CPC were taken up, by the Trial Court. Both I.A. No. 2277 of 2001 filed by the 1st defendant-Company and I.A. No. 2278/2001 filed by the defendants 2 and 4 were allowed by the Court below by separate orders dated 14.2.2002 subject to payment of costs of Rs. 2,000/- on or before 28.2.2002. However, the costs were not paid within the time granted and on 28.2.2002 the defendant No. 1 filed I.A.(SR) No. 1322 of 2002 and the defendants 2 and 4 filed LA. (SR) No. 1321 of 2002 u/s 148 of CPC seeking extension of time by one week for depositing the costs. The Court below rejected the said applications by identical orders dated 28.2.2002. The said order may be extracted hereunder:

"Heard. There are no tenable grounds. Petitioner did not come up with any affidavit. Sufficient time was granted for payment of costs. Hence rejected."

3. Consequently, I.A. No. 2277 of 2001 and I.A. No. 2278 of 2001 were also dismissed for non-payment of costs. In the circumstances, C.R.P. No. 1518 of 2002 was filed against the order rejecting I.A.(SR) No. 1321 of 2002, C.R.P. No. 1456 of 2002 was filed aggrieved by rejection of I.A. (SR) No. 1322 of 2002, whereas C.R.P. No. 1325 of 2002 has been filed against the order dated 28.2.2002 dismissing LA. No. 2278 of 2001.

4. I have heard the learned Counsel for the Revision Petitioners as well as the learned Counsel for the 1st respondent

5. The learned Counsel for the Revision Petitioners contends that the orders under revision are erroneous and contrary to the settled principle of law that the cause shall be decided on merits to advance substantial justice to the parties. The learned Counsel further contends that the Court below failed to exercise the discretion judiciously and that in the facts and circumstances of the case there is absolutely no justification in refusing to extend the time by one week as sought by the petitioners for complying with the earlier orders.

6. On the other hand, the learned Counsel for the respondent vehemently contended that the conduct of the petitioners clearly shows the deliberate inaction on their part to pursue the proceedings diligently. The learned Counsel while drawing my attention to the order of this Court dated 29.11.2001 in C.R.P. Nos. 4899 of 2001 and etc,, wherein this Court directed that the main suit shall be disposed of within two months submitted that in spite of the orders of this Hon"ble Court there was absolutely no progress in the suit proceedings and in the facts and circumstances of the case the orders under revision are justified and the same do not warrant any interference. The learned Counsel also brought

to my notice the fact that in pursuance of the ex parte decree dated 13.6.2000 the plaintiff-decree holder filed Execution Application No. 390 of 2000 in the High Court of Bombay in exercise of its original jurisdiction and the same is at the stage of proclamation of sale of the E.P. Schedule property and contended that if at this stage the clock is set back, serious prejudice would be caused to the respondents.

7. I find force in the contentions of the learned Counsel for the respondent. Admittedly, this is a case where the summons were received by the defendants from the Court well within the time. However, on the ground that the copy of the plaint was not furnished along with the summons the Revision Petitioners/defendants failed to appear before the Court, which resulted in an ex parte decree. The Court below having considered the material on record thought it fit to set aside the ex parte decree subject to payment of costs of Rs. 2,000/- to the respondent/plaintiff on or before 28.2.2002, failing which the petition stands dismissed automatically.

8. It is pertinent to note that in view of the default clause added by the Court below the order worked itself out by 28.2.2002 itself. However, the petitioners came up with the applications in question u/s 148 of CPC on 28.2.2002 stating that as the petitioners were not in a position to pay the costs due to their financial constraints they had filed an appeal before the High Court of A.P. for setting aside the order of costs and that the said appeal is pending and stands posted for hearing and therefore, it is just and necessary to extend the time for paying the costs by one week from 28.2.2002.

9. It is also pertinent to note that the said affidavit was sworn to by the Junior Counsel attached to the office of the Counsel for the petitioners. Though the fact that the parties themselves did not swear to the affidavit may not be taken as a ground for rejecting the application, in the totality of the facts and circumstances of the case the plea of the petitioners that they were not in a position to pay the costs of Rs. 2,000/- does not seem to be bona fide. It is relevant to note that the Court below has granted about 2 weeks time for payment of costs of Rs. 2,000/-. The tenor of the affidavits filed in support of the applications in question shows that the petitioners sought extension awaiting orders in the appeals said to have been preferred by them rather than on account of their financial constraint to pay the costs of Rs. 2,000/-. Even the affidavits are vague and lacking in material particulars to show that the petitioners have taken any genuine steps either to comply with the order or to pursue the appeals said to have been preferred by them. At any rate, the mere pendency of the appeals cannot be taken as a justifiable ground for granting extension. In the circumstances, the conclusion of the learned Judge that sufficient time was already granted for payment of costs and therefore there are no tenable grounds for extension time cannot be said to be unjustified. Even assuming that the plea of the petitioners is genuine and that a different view on facts is possible, interference in exercise of revisional jurisdiction only on that ground is not permissible. Therefore, I am unable to hold

that the conclusion of the Court below is erroneous.

10. It is well-settled that the power to grant extension of time u/s 148 of CPC is purely a discretionary one and it can be exercised only where the Court is satisfied with the reasoning given for extension of time. While exercising the discretionary power the Court is also entitled to take into consideration the conduct of the party praying for extension. Having regard to the facts and circumstances of the case, I do not find any reason to hold that the discretion exercised by the learned Trial Judge is arbitrary nor can it be termed as perverse. The orders impugned are also not in breach of any provision of law and there is absolutely no error of jurisdiction.

11. It may also be relevant to note that the orders under revision were passed as long back as on 28.2.2002 and in the interregnum the petitioners allowed the plaintiff/decreed holder to proceed with the execution of the ex parte decree which is now at the stage of proclamation of sale. In the circumstances, I am unable to accept the submission of the learned Counsel for the petitioners to take a liberal view and to grant short time for payment of costs as ordered in I.A. Nos. 2277 and 2278 of 2001 so as to enable the petitioners to contest the matter on merits. For the aforesaid reasons, I do not see any justifiable reason to take a view contrary to the conclusion reached by the Court below.

12. Viewed from any angle, in my considered opinion the orders under revision do not suffer from any infirmity, and accordingly, all the Civil Revision Petitions are dismissed. No costs.