

(2004) 07 AP CK 0057

In the Andhra Pradesh High Court

Case No : CRP No"s. 93 and 95 of 2004

Kalaga Krishna Rao and Another

APPELLANT

Vs

Kalaga Dibbaiah @ Surya Rao and Others

RESPONDENT

Date of Decision : 02-07-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148
Limitation Act, 1963 — Section 5

Citation : (2004) 4 ALD 783 : (2004) 5 ALT 231 : (2004) 3 APLJ 60

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : D.V. Ramana Murthy, for the Appellant;

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.

1.This common order shall dispose of the two civil revision petitions. The petitioners in CRP No. 93 of 2004 are Defendants 1 and 2 in O.S. No. 179 of 1985 on the file of the Court of the Principal Senior Civil Judge, Srikakulam. The suit was filed for partition. The sole petitioner in CRP No. 95 of 2004 is the plaintiff in O.S. No. 23 of 1987 on the file of the same Trial Court, which is also for partition. The learned Trial Judge by a common judgment dated 20.1.2000 dismissed both the suits. Aggrieved by the same, the respondents in both the civil revision petitions filed two separate appeal suits before the Court of District Judge, Srikakulam in March 2000. The Court returned the papers raising certain objections on 3.4.2000. The same was re-presented on 8.7.2003 with a delay of 1183 days. The learned Appellate Judge by order dated 11.8.2003 allowed the I.A. No. 1722 of 2003 out of which CRP No. 93 of 2004 arises, and I.A. No. 1723 of 2003 out of which CRP No. 95 arises imposing the costs of Rs. 300/- (Rupees three hundred only) in each I.A. Aggrieved by these, the two civil revision petitions filed.

2. The learned Counsel for the petitioner Sri D. Ramana Murthy submits that while enlarging time as contemplated u/s 148 of Code of Civil Procedure, 1908 (CPC), a duty is cast on the Court exercising such power of enlargement to issue notice to the opposite parties. He would substantiate this by contending that if abnormal delay in representation of the case papers is condoned, that would adversely affect the rights, interests and privileges of the opposite parties, which may have been crystallised. Secondly, he would urge that the Trial Court acted arbitrarily in condoning the delay of 1183 days in re-presenting the two appeal suits arising out of the two suits.

3. Section 148 of the CPC reads as under:

148. Enlargement of time :--Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

4. A plain reading of the provision would show that discretion is vested in the Court to enlarge time from time to time even though the period originally fixed for doing any act may have expired. This judicial discretion has to be exercised on sound principles. When absolute discretion is vested, it would be improper to interpret the provision in a curtailing manner, by reading the rules of natural justice or a requirement of giving notice to the opposite parties. Such interpretation would lead to absurdities. In many matters even at the initial stages where the case, be it either a suit, interlocutory application, appeal or revision is registered, the Courts return the case papers for complying with procedural formalities. If at that stage, notice is contemplated, it would certainly delay the Court process.

5. It is well settled that while interpreting the provisions of the enactment, the Court cannot introduce the words or requirements, which are specifically excluded by the Legislature. It is also well settled that judicial discretion has to be exercised to secure ends of justice in the case of necessity. When the notice is not contemplated and when there is no prejudice caused to any party, it is not proper to read the requirement of notice u/s 148 of the C.P.C. In *Smt. Jodhayan Vs. Babu Ram and Others*, , the Supreme Court observed that the power given to the Court u/s 148 of the C.P.C is discretionary and is given for the purpose of securing the ends of justice in case of necessity and that the exercise of judicial discretion depends on facts of each case. In *Prakash Rao v. Singareni Collieries*, 1995 AIHC 977 (AP), it was held that the application for extension of time u/s 148 of the CPC cannot be equated with an application for Condonation of delay u/s 5 of the Limitation Act, and that an order of the Court enlarging time cannot be assailed on the ground of non-observance of audi alteram partem.

6. Section 148 of the CPC was amended by CPC (Amendment) Act, 1999 (Act No. 46/1999) with effect from 1.7.2002. After amendment, the provision reads as under:

148. Enlargement of time :--Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, not exceeding thirty days in total, even though the period originally fixed or granted may have expired.

7. After amendment of provision, the words "not exceeding thirty days in total" were introduced by the Legislature in Section 148 of the CPC. After amendment, the discretion vested in the Court to extend time from time to time for complying with the Court objections, has been curtailed. With effect from 1.7.2002, the Court exercising powers in accordance with CPC cannot extend the time or enlarge the time for doing an act prescribed or allowed more than thirty days in total. Nonetheless, as the respondents filed the application in relation to unnumbered appeal suit, which was rejected in the year 2000, the amended provision has no application, as a valuable right to appeal against the original decree cannot be curtailed by subsequent amendment in the provision conferring power on the Court to enlarge the time for doing the act.

8. For the above reasons, this Court finds no merit or any grave error on the face of record warranting exercise of power under Article 227 of the Constitution of India. The civil revision petitions are accordingly dismissed.