

(1979) 04 AP CK 0020
In the Andhra Pradesh High Court
Case No : C.P.R. No. 4464 of 1978

Kantheti Damodara Gupta

APPELLANT

Vs

Koppineni Venkateswara Rao and others

RESPONDENT

Date of Decision : 04-04-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16, Order 22 Rule 12, Order 22 Rule 3, Order 22 Rule 4, Order 22 Rule 8

Citation : (1979) 04 AP CK 0020

Hon'ble Judges : Madhusudhan Rao, J

Bench : Single Bench

Advocate : N. Rama Mohana Rao, for the Appellant;

Final Decision : Allowed

Judgement

Mr. Madhusudhan Rao, J.—This revision is directed against the order passed by the learned Subordinate Judge, Gudivada, in E.A. No. 206 of 1974 in O.S. No. 130 of 1951. The petitioner is one of the legal representatives of the third decree-holder who died pending an execution petition filed he was alive. The petitioner and others filled in the E.A. in the Court of the Subordinate Judge, Gudivada who passed the decree, praying the Court to condone the delay in these approaching the Court and to bring them on record as the legal representatives of the deceased third decree-bolder to enable them to continue the execution proceedings. They first filed an application before the Subordinate Judge's Court, Machilipatnam, so which Court the decree was transferred for execution but they were directed to present the application in the Gudivada Court which originally passed the decree. The learned Subordinate Judge, Gudivada dismissed the application holding that there were no valid grounds for condoning the inordinate delay of three months in filing the petition for being added as legal representatives. Order XXII, Rules 12 CPC. provides that nothing in rules 3, 4 and 8 shall apply to proceedings in excution of a decree or order. It was held by a Full Bench of the Madras High Court in Venkatachalam Chetti Vs. Ramaswami

Servai (dead) and Others, that condition imposed on the legal representatives of a deceased-plaintiff to be brought on record within the time allowed by law does not attach to execution proceedings. In the case of the death of a decree holder, the execution proceedings do not abate. By reason of Sec. 146 and Or. 21, Rule 16 CPC. the legal representatives of a decree holder, who died during the pendency of an execution petition, can be substituted in the execution petition and be allowed to continue it Article 120 of the Limitation Act, which prescribes a limitation period of 90 days applies only to the application that have to be filed by the legal representatives to be brought on record only in the case of suits or appeals from such suits and not to execution proceedings, as Rule 12 of Order 22 of C.P.C, expressly provides that nothing in Rules 3, 4 and 8 of Order 22 shall apply to the proceedings in execution of a decree or order.

2. It is no doubt a mistake on the part of the petitioners to the E, A to seek condition of the delay, but the fact that the petitioners did not know the law correctly cannot be a ground to deny them what they are entitled under the law. The application of the petitioner for condoning the delay and adding them as legal representatives ought to have been treated only as an application for adding them as legal representatives of the deceased 3rd decree-holder and ought to have been allowed. The order of dismissal passed by the learned Subordinate Judge is erroneous and is accordingly set aside. E.A. No. 206 of 1974 filed by the petitioners allowed by bringing them on record as the legal representatives of the deceased 3rd decree-holder. In the result, the revision is allowed. No costs.