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**(2001) 11 AP CK 0059**  
**In the Andhra Pradesh High Court**  
**Case No : CRP No. 1037 of 1999**

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|----------------------------------------|----|------------|
| Kolli Purushotham Chowdary             | Vs | APPELLANT  |
| Balaji Finance Corporation and Another |    | RESPONDENT |

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**Date of Decision :** 28-11-2001

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 144, 2, 47

**Citation :** (2002) 1 ALD 1 : (2001) 6 ALT 785

**Hon'ble Judges :** A.R. Lakshmanan, C.J.;V.V.S. Rao, J

**Bench :** Division Bench

**Advocate :** Srinivasa Kumar, for the Appellant; Venkateswara Rao and Gudapati, for the Respondent

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## Judgement

A.R. Lakshmanan, C.J.—CRP No.1037 of 1999 was filed against the order dated 22-2-1999 passed in an unnumbered EA in EP No.16 of 1997 in OS No.151 of 1989 on the file of the senior Civil Judge, Avanigadda. The lower Court rejected the petition filed u/s 47 of the CPC as not maintainable.

2. According to the petitioner, the final decree petition was filed beyond three (3) years from the date of preliminary decree and that the interest has been awarded on the suit amount and that part payments made were not given credit to in the final decree and the interest granted in the decree is also excessive. In this case, the preliminary decree was passed on 6-11-1990 granting six (6) months" time to redeem the mortgage and the time granted was expired on 6-5-1991. Since the preliminary decree has not been complied with, the final decree petition was filed on 18-12-1993, within the period of three years and a final decree was passed on 1-2-1996. Therefore, the contention raised by the petitioner that the preliminary decree has been passed beyond the limitation period is not sustainable in law and is liable to be rejected.

3. It is also not in dispute that the Judgment Debtors have not preferred any appeal against the final decree. Thus, the final decree passed by the lower Court has become final and conclusive and binding on both parties to the lis.

4. Before the learned single Judge it was contended that the decree is only an *ex parte* decree and rightly the Court below has rejected the application as not maintainable. Reliance was placed on the decision of the Calcutta High Court in *Sk. Firoj and another Vs. Sakhya Singha Mullick and others*, , to the effect that the executability of a decree, where it is an *ex parte* decree, cannot be challenged by invoking the provisions of Section 47 of the Code of Civil Procedure.

5. According to the teamed single Judge, who referred this matter to this Bench, the said proposition appeared to be a very broad proposition. According to the learned Judge, from the language of Section 47 a distinction cannot be drawn between a "decree on contest" and a "decree passed *ex parte*". Therefore, in the light of the submissions made by both the parties, the learned single Judge referred the following question for an authoritative opinion by the Division Bench. The question referred reads thus:

Whether the provisions of Section 47 of the CPC can be invoked in the case of an *ex parte* decree and can a distinction be drawn between an *ex-parte* decree and a decree on merits for invoking the provisions of Section 47 of the Code of Civil Procedure?

6. It is useful to extract the definition of "decree" as defined in Section 2(ii) of the Code of Civil Procedure, which reads thus:

"Decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include-

- (a) any adjudication from which an appeal lies as an appeal from an order; or
- (b) any order of dismissal for default.

Explanation:- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final where such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

7. A close scrutiny of the definition of "decree" would show that the decree passed by a Court conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final and that it shall be deemed to conclude the rejection of a plaint and the determination of any question within Section 144. However, it shall not include: (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default.

8. It is also useful to reproduce the definitions of "decree holder" and "judgment debtor" as defined in Section 2 Sub-clauses (iii) and (x) respectively in the Code of Civil Procedure. They read:

2(iii). "Decree-holder" means any person in whose favour a decree has been

passed or an order capable of execution has been made.

2(x) "Judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made.

9. Both the definitions refer to an order which is capable of execution. Applying the above principle it will be seen that the final decree passed in the instant case which conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit which may be either preliminary or final is capable of execution.

10. For the foregoing reasons, we answer the reference in the affirmative. We make it clear that the provisions of Section 47 of the CPC can be invoked in the case of an ex parte decree also. However, there cannot be any distinction between an ex parte decree and a decree on merits for invoking the provisions of Section 47. The reference is answered accordingly.