
(2005) 09 AP CK 0012
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3102 of 2005

Kondapalli Nagaraja

APPELLANT

Vs

Kondapalli Syamala

RESPONDENT

Date of Decision : 27-09-2005

Acts Referred:

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

Citation : (2006) 2 ALD 28 : (2006) 1 ALT 183

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : J. Kusumavathi, for the Appellant; Y. Krishna Reddy, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—In a suit for recovery of money filed by the respondent against him an ex-parte decree was passed against the petitioner. So, he filed a petition to set aside the said ex-parte decree with a petition to condone the delay of 440 days which was dismissed by the order under revision.

2. The case, in brief, of the petitioner is that as, he who was doing business in the name and style of Annapurna Insecticides Industry at Industrial Estate, had closed that business and started business in P.V.C. pipes and was touring extensively in this State and the neighboring States, he could not contact his counsel, who was addressing letters to his old address, and so could not be received by him, and had come to know, through his counsel, about two days prior to filing of the petition, that an ex parte decree was passed against him on 16-12-2002, and since there are no laches on his part in filing the petition to set aside the ex-parte decree within the time prescribed, delay of 440 days in filing the said petition may be condoned.

3. The case of the respondent is that the revision petitioner who is looking after O.S. Nos. 746 and 1346 of 2000 in the Court of the Junior Civil Judge, by

regularly attending the hearings of those suits, cannot claim lack of knowledge of the dates of hearing of the suit filed against him by her, and since this petition is filed only with a view to drag on the proceedings, the inordinate delay occurred due to the laches and negligence of the revision petitioner cannot be condoned.

4. In support of his case revision petitioner examined himself as P.W.1. In support of her case respondent examined her husband as R.W.1. No documentary evidence was adduced by the parties. Learned trial Judge dismissed the petition on the ground that revision petitioner failed to give proper explanation for the delay.

5. The main contention of the learned counsel for the revision petitioner is that since revision petitioner and respondent are closely related to each other, as the husband of the respondent is the brother of the revision petitioner, and since this suit, filed in connection with a family dispute, is likely to be compromised, and since the delay in filing the petition to set aside the ex-parte decree was due to the continuous absence of the revision petitioner, as he used to go on frequent tours in connection with his business, the delay may be condoned by imposing some reasonable terms.

6. The contention of the learned counsel for the respondent is that since the evidence of the revision petitioner as P. W. 1 shows that there is no change in his residential address, and since revision petitioner has been attending the Court of the Junior Civil Judge in connection with the suits filed by or against his wife, his contention that he is not aware of the stages of the suit filed against him cannot be believed or accepted, as he could have easily known the dates of adjournment of the case.

7. In reply the contention of the learned counsel for the petitioner is that since evidence in the suits pending in the junior civil judge's Court was recorded after the filing of this petition u/s 5 of the Limitation Act, pendency of the suits in the Junior Civil Judge's Court has no relevance for deciding this petition.

8. The evidence of revision petitioner as P.W.1 is that he came to know about the ex parte decree dated 16-12-2002 in this case only in the third week of March, 2004 and had immediately filed a petition to set aside the ex-parte decree with a petition to condone the delay, and that he closed his business in pesticides prior to 1998 and started business in P.V.C. pipes in October, 1999 and was going to several places in connection with that business and so he could not concentrate on the suit filed against him by the respondent, and since he did not receive any communication from his counsel he was not aware of the disposal of the suit. During cross-examination he stated that, he has no documentary evidence to show that he was not available in town on 16-12-2002 (the date of decree) and after the filing of the suit in 1999 he attended court only twice and admitted that he is looking after the suits in the Junior Civil Judge's Court on behalf of his wife, and that the evidence of the respondent herein in those suits, was recorded on 23-3-2002, and that the advocate engaged by him in those two suits is different

from the advocate engaged by him in this suit, and that he from 2000 did not enquire about the stage of this suit. To the question "Can you assign any reason why you did not verify from your Advocate about the stage of the suit in O.S. No. 8 of 1999 from 2000 onwards?" he answered "My Advocate told me that he would inform me whenever my presence is required and so I did not contact him due to the said promise" and admitted that he did not state so in his affidavit filed in support of the petition, and also admitted that he is residing in a portion of the house where his erstwhile pesticide industry is located, and that he received the notice in the E.P, filed by the respondent at that residential address.

9. The evidence of the husband of the respondent as R.W.1 is that the revision petitioner who has been attending the suits in the Junior Civil Judge's Court on behalf of his wife, is aware of the stages of this suit.

10. The reasons for the delay, as per the case of the revision petitioner, is his pre-occupation with his business. Though in his affidavit filed in support of the petition in the trial court petitioner alleged that inasmuch as his advocate wrote letters to his old address he could not receive them, surprisingly during cross-examination he stated that inasmuch as his counsel informed him that he need be present in court only when he (the advocate) asks him (revision petitioner) to come, he did not contact his counsel to find out the stage of the case. If that statement, which has no foundation in the affidavit, is true, revision petitioner changing his business to PVC pipes from pesticides and his being on tour to several places will have no relevance for deciding this petition, more so because revision petitioner, as P.W.1 stated that he closed his pesticide business prior to 1998, and since the suit was filed in 1999 i.e., an year after the closure of his pesticide business, and since he admitted that he is residing in a portion of the premises where he carried on pesticide business and received the notice in the E.P. at the same address. So it is clear that in spite of his shifting to PVC pipes business from pesticides business, petitioner's house address remained the same. So, the letters addressed by his counsel to his residential address would have reached him. So the allegation in the affidavit of the revision petitioner that he did not receive letters from his counsel after change of his business cannot be believed or accepted. Since revision petitioner did not state in his affidavit about his counsel's assurance, spoken to by him during cross-examination, that statement need not be taken into consideration.

11. Even assuming that the counsel of the revision petitioner assured him that he need not attend Court till he receives a communication from him, such assurance, may, and can, be used by the revision petitioner against his counsel for the damage, if any, caused to him due to lack of communication from his counsel, but he cannot make use of that assurance to defeat the valuable right of limitation that had accrued to the respondent due to long lapse of time, which cannot lightly be set at naught, more so when it occurred due to the laches or negligence of the party or his counsel. A litigant is expected to be diligent, and is bound to find out the stage of the case periodically from his counsel, in spite of

the assurances given by his counsel, as, it is he, but not the counsel, that would ultimately have to suffer, for the negligence, if any, on the part of his counsel. Revision petitioner who is more interested in his business, and less interested in the stage of the case filed against him, has to blame himself for the indifference exhibited by him in not trying to find out the stage of the case filed against him.

12. Revision petitioner, who admittedly is looking after the cases in the Court of the Junior Civil Judge had admitted that the evidence of the respondent in this case in those suits, was recorded on 23-2-2002. Nothing could have prevented him from finding about the date of hearing of the suit filed by the respondent against him, in the District Court, when he attended the Court of the Junior Civil Judge, on that date, or any other subsequent date. Revision petitioner, who has been taking keen interest in the suits filed in the junior civil judge's court is expected to be and should in fact be equally interested in the suit filed against him by respondent in the District Court. Closing his eyes to the proceedings against him in District Court and giving importance to the suits in the Junior Civil Judge's Court, is a clear reflection of the indifference or negligence or lack of care on the part of the revision petitioner. So he should suffer the consequences therefore and so, the Court below refusing to condone the long delay of 440 days cannot be said to be erroneous, as it occurred only due to the lethargy or negligence and laches on the part of the revision petitioner.

13. In the above circumstances, I would not have normally interfered with the order under revision. But inasmuch as the parties are said to be closely related and since the learned counsel for the revision petitioner states that there is a likelihood of a compromise, between the parties, I wish to interfere with the order under revision by imposing heavy terms on the revision petitioner, which would take care of the interest of the respondent, to whom valuable rights have accrued due to the law of limitation.

14. On condition of the revision petitioner depositing 75% of the decretal amount into the trial Court within a period of 45 days from to-day, and on his furnishing a solvent third party security for the balance 25% of the decretal amount to the satisfaction of the trial Court within 45 days from to-day, this petition and consequently the petition to condone the delay in filing the petition under Order IX Rule 13 C.P.C. filed by the revision petitioner would stand condoned. In default the petition stands dismissed with costs. This revision is ordered accordingly.