
(2014) 01 AP CK 0051

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3411 of 2012

Kondaveeti Venkata Appa Rao

APPELLANT

Vs

Kondaveeti Jaga Mohan Rao

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

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

Citation : (2014) 3 ALD 222 : (2014) 3 ALT 690

Hon'ble Judges : L.N. Reddy, J

Bench : Single Bench

Advocate : P.S.P. Suresh Kumar, Advocate for the Appellant; T. Muralidhar Reddy, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

L. Narasimha Reddy, J.—The respondent filed O.S. No. 300 of 2008 in the Court of Principal Junior Civil Judge, Sattenapalli, Guntur District, against the petitioner for recovery of a sum of Rs. 60,000/-, on the strength of a promissory note dated 07-12-2005. The suit was decreed ex parte on 18-11-2009. Thereupon, the petitioner filed an application under Order IX Rule 13 C.P.C., with a prayer to set aside the ex parte decree. Since there was delay of 283 days in filing that application, he filed I.A. No. 1336 of 2010, u/s 5 of the Limitation Act. He pleaded that soon after receiving the summons in the suit, he engaged an advocate, and for the past 4 years, he is residing at Hyderabad for livelihood. It was stated that he lost communication from his advocate, and only in September, 2010, he came to know about the ex parte decree, and accordingly filed the appeal. The LA was opposed by the respondent. The trial Court dismissed the I.A., through order dated 20-06-2012. Hence, this revision. Heard Sri P.S.P. Suresh Kumar, learned counsel for the petitioner and Sri T. Muralidhar Reddy, learned counsel for the respondent.

2. The delay involved is 283 days, and the explanation offered by the petitioner

is that, he is living in Hyderabad for livelihood, for the past four years, and he did not have any contact with the Advocate. There was certainly some lapse on the part of the petitioner in pursuing the proceedings. However, the lapse on the part of the trial Court was far more serious.

3. Once the I.A. is filed under Order IX Rule 13 C.P.C. with a prayer to set aside the ex parte decree, the concerned Court is not supposed to proceed with the execution. In the instant case, the respondent filed E.P. No. 6 of 2011, at a time when the application under Order IX Rule 13 C.P.C. is pending. On the one hand, the Court adjourned the application to set aside the ex parte decree, and on the other hand, it proceeded with jet speed in the E.P. The course adopted by the trial Court/Executing Court is reprehensible. Unfortunately, that very lapse is cited as a ground for rejecting the application.

4. Normally, this Court would maintain utmost restraint in pointing out any errors in the language employed by a Court in its orders, or judgments. However, in the recent past, hardly any attention is being paid by fairly good number of Presiding Officers on such aspects. Even simple sentences are not free from errors. That would tell upon the capacity and capability of a Judge. The attention, which a Judge pays to the subject-matter, can be gauged from the text of the order or judgments. Fortunately or unfortunately, it is only through an order passed, or judgment rendered by him, that a Judge would convey his understanding, analysis and adjudication of the matter, not only to the parties before him, but also to the superior Courts. If he is unable to choose the correct expressions and frame correct sentences, the very purpose of adjudication gets watered down or defeated. Many a time, such half-hearted and half-baked adjudication would give rise to more problems than what the Court purports to decide. In the instant case, the lack of attention on the part of the learned Presiding Officer can be easily assessed from the following two sentences, in the order under revision:

...On perused the record, on several times, summons are issued to the defendant, ultimately, paper publication was ordered, by that time only the petitioner filed his vakalat in the Court, subsequently failed to attend before the Hon'ble Court to file his written statement in the Court. Hence, on careful perused the entire record, I found no bonafides on the part of the petitioner to file this petition. In view of the above facts and circumstances, the petitioner is not entitled to condone the delay of 283 days.

5. The grammatical blunders apart, the learned judge appears to be not clear, as to whether it is he, that must condone delay, or the petitioner himself.

6. Nobody is born with perfect skills of communication, nor one expects a Judge, to employ the language of a professional writer in English. At the same time, he cannot feel it free to dump in an order, whatever words that occur to him and leave it to the parties or the superior Courts to guess the meaning of their choice. Few decades ago, there used to be officers, who are able to render judgments, hardly with any errors. There never used to be an occasion for

superior Courts to struggle to know as to what exactly is the meaning of the sentences in the judgment before it. In the recent past, gross negligence is being exhibited on this aspect. It only reflects the lack of respect to the office held by the judicial officers and total callousness.

7. Another aspect is that, a feeling is developing in some of the officers, that, with the phenomenal increase in the emoluments and power at their disposal, they do not have to care for anything. Unless this tendency changes, it would not be too long that the institution loses its respect, and the High Court had to step in, to curb these tendencies, if necessary, by exhibiting harshness also. If a student cannot plead an excuse for committing mistakes, and is exposed to failure in the examination, there is no reason why a responsible judicial officer must be extended a different facility. This Court is compelled to make these elaborate observations purely on account of the unfortunate development, wherein, the judicial officers, particularly, those, recruited in the recent past, are taking everything for granted, and the effort is to send a message, that such lapses cannot be taken kindly, any longer.

8. The C.R.P. is accordingly allowed, and the order under revision is set aside. The delay is condoned, and to avoid further complications, it is directed that the ex parte decree dated 18-11-2009 shall stand set aside.

9. The learned Presiding Officer, Sattenapalli, is put on notice that if such instances come to the notice of this Court, adequate measures would be indicated for correction thereof. The miscellaneous petition filed in this C.R.P. shall also stand disposed of. There shall be no order as to costs.