

(2010) 04 AP CK 0034

In the Andhra Pradesh High Court

Case No : C.R.P. No's. 254 and 494 of 2010

L. Venkata Krishna Reddy (Died) Per L.Rs.

APPELLANT

Vs

M. Anjinappa (Died) and Others

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2, Order 9 Rule 13, Order 9 Rule 4, Order 9 Rule 9, 115
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Article 122, 123, 137, 2(1)

Citation : (2010) 3 ALT 817 : (2010) 2 APLJ 105

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : S.V. Sundara Rajan, in CRP 254/2010 and R. Prasad, in CRP 494/2010, for the Appellant; S.V. Sundara Rajan, for R-31 and R-32 in CRP 494/2010 and V.L.N.G.K. Murthy, in C.R.P. No. 254 of 2010 and for Respondent Nos. 2, 4 and 10 to 28 in C.R.P. No. 494 of 2010, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, J.—These two Revision Petitions which are directed against the order dated 19.10.2009 in I.A. No. 364 of 2008 in I.A. No. 188 of 1996 in O.S. No. 33 of 1985 on the file of the Court of the Senior Civil Judge, Hindupur are heard together and decided by this common order:

2. O.S. No. 33 of 1985 filed by the respondents 1 to 5 herein for specific performance of the agreement of sale dated 19.04.1980 was decreed ex parte by judgment dated 11.8.1992. The petitioners in these two Revision petitions filed I.A. No. 188 of 1996 under Order 9 Rule 13 of C.P.C. for setting aside the ex parte decree dated 11.08.1992. The said application was dismissed for default on 7.6.2006. Thereafter, the Revision petitioners filed I.A. No. 364 of 2008 under Order 9 Rule 9 of C.P.C. to set aside the dismissal order dated 7.6.2006 and to restore I.A. No. 188 of 1996. After hearing both the parties, I.A. No. 364 of 2008 was dismissed by the Court below by order dated 19.10.2009. The said order is

under challenge in these two Revision Petitions.

3. I have heard Sri S.V. Sundararajan, the learned Counsel appearing for the petitioners in C.R.P. No. 254 of 2010, Sri R. Prasad, the learned Counsel appearing for the petitioner in C.R.P. No. 494 of 2010 as well as Sri V.L.N.G.K. Murthy, the learned Counsel appearing for the respondents and perused the material available on record.

4. Before adverting to the contentions raised by the learned Counsel for the parties, it is necessary to notice the following undisputed facts borne out of the record.

5. The respondents 1 to 5 herein - M. Anjinappa and four others filed O.S. No. 30 of 1983 on the file of the Court of the Sub-Judge, Penukonda, against one L. Venkata Krishna Reddy for specific performance of the agreement of sale dated 19.04.1980 executed by him in respect of the suit schedule property. The said suit was renumbered as O.S. No. 33 of 1985 on transfer to the Court of Additional District Judge, Hindupur. The suit was contested by the defendant L. Venkata Krishna Reddy by filing a written statement dated 26.06.1984. Subsequently, the defendant's son by name L. Ramana Gopala Reddy was impleaded as defendant No. 2. While the suit was coming up for trial, the advocate for the defendants reported no instructions and they were set ex parte. Consequently, by judgment dated 11.08.1992, the suit was decreed ex parte directing the 1st defendant to execute a Registered Sale Deed as per the terms of the Agreement of Sale, dated 19.04.1980.

6. On 10.09.1992 the 1st defendant - L. Venkata Krishna Reddy - filed an application under Order 9 Rule 13 of C.P.C. to set aside the ex parte decree dated 11.8.1992. Even before the said application (I.A. No. 363 of 1994) was taken up for enquiry, L. Venkata Krishna Reddy died. By that time, the Court of the Senior Civil Judge was constituted at Hindupur and I.A. No. 363 of 1994 was renumbered as I.A. No. 188 of 1996. While so, the wife of L. Venkata Krishna Reddy, by name L. Saraswathamma and his daughter P. Srilatha filed I.A. No. 189 of 1996 in the Court of the Senior Civil Judge, Hindupur, to bring them on record as legal representatives of the deceased petitioner - L. Venkata Krishna Reddy - in I.A. No. 188 of 1996 and the same was ordered on 1.11.2003. By virtue of the said order, apart from adding L. Saraswathamma and P. Srilatha as petitioners 2 & 3, four sons of the deceased L. Venkata Krishna Reddy, including the 2nd defendant - L. Ramana Gopal Reddy, were added as respondents 6 to 9 to I.A. No. 188 of 1996 as it was pleaded by L. Saraswathamma that they were not evincing any interest to pursue the proceedings. In the meanwhile, the 1st plaintiff M. Anjinappa died and his legal representatives were added as respondents 10 to 16 to I.A. No. 188 of 1996. Similarly, on the death of the 5th plaintiff M. Govinda Reddy, his legal representatives were added as respondents 17 to 20, and on the death of the 3rd plaintiff - M. Thimma Reddy - his legal representatives were added as respondents 21 to 28. That apart, the respondent No. 7 (son of the deceased defendant - L. Venkata Krishna Reddy) also died and

his legal representatives - L. Nageswara Reddy and L. Uma Maheswari - came on record as petitioners 4 and 5 in I.A. No. 188 of 1996.

7. Separate counters were filed on behalf of the respondents 1 to 5 and the respondents 21 to 28, contesting I.A. No. 188 of 1996. However, when the said petition came up for hearing on 7.6.2006, the advocate for the petitioners reported no instructions and the petitioners were also called absent. Accordingly on 7.6.2006, I.A. No. 188 of 1996 was dismissed.

8. Two years thereafter, the petitioners in I.A. No. 188 of 1996 filed I.A. No. 364 of 2008 under Order 9 Rule 9 of C.P.C. to set aside the order dated 7.6.2006 and to restore I.A. No. 188 of 1996. The 2nd petitioner Smt. L. Saraswathamma filed an affidavit in support of I.A. No. 364 of 2008 stating that due to her old age there was a communication gap with her advocate and that on 13.05.2008 when she approached her advocate at Hindupur and enquired about the stage of I.A. No. 188 of 1996, it was revealed that the said application was dismissed for default as the advocate had reported no instructions on 7.6.2006. It was alleged that her advocate reported no instructions without notice to her and till 13.05.2008 she was under an impression that her advocate was prosecuting the case and that I.A. No. 188 of 1996 was pending. It was further pleaded that since they came to know about the dismissal of I.A. No. 188 of 1996 only on 13.05.2008, the application under Order 9 Rule 9 of C.P.C. was filed within 30 days from the date of knowledge.

9. The respondents filed a counter contending that the petition was barred by limitation. The plea that there was communication gap between the 2nd petitioner and her advocate and that she came to know about the dismissal of I.A. No. 188 of 1996 only on 13.05.2008 was denied and it was stated that the petitioners were in contact with their advocate constantly and they were closely following the proceedings in the Court. It was also specifically pleaded that the same advocate was appearing in E.P. No. 50 of 1996 and was contesting the execution proceedings even after 7.6.2006 till it was allowed on 19.01.2007 directing execution of the sale deed. It was also alleged in the counter that the advocate reported no instructions in I.A. No. 188 of 1996 with full knowledge of the petitioners and at the instance of the petitioners and that they were fully aware of the dismissal of I.A. No. 188 of 1996 on the day of dismissal of the application itself. It was also stated that challenging the order dated 19.01.2007 in E.P. No. 50 of 1996 directing the petitioners to execute a sale deed in terms of the decree in O.S. No. 33 of 1985, the petitioners filed C.R.P. No. 607 of 2007 and the same was allowed by order dated 1.11.2007 remanding the matter to the trial Court for fresh consideration. It was alleged that I.A. No. 364 of 2008 was filed only thereafter seeking restoration of I.A. No. 188 of 1996 apprehending that their objections raised in E.P. No. 50 of 2006 may not be accepted. It was contended that the fact that the petitioners filed C.R.P. No. 607 of 2007 itself showed that the petitioners had knowledge of the dismissal of I.A. No. 188 of 1996.

10. It was contended before the Court below on behalf of the petitioners that it was the duty of the Court to issue notice to the party and I.A. No. 188 of 1996 could not have been dismissed merely on the ground that the advocate for the petitioners reported no instructions. The said contention was rejected by the Court below relying upon Order 17 Rule 2 of C.P.C. which provides for disposal of the suit where the parties or any of them failed to appear on any date to which the hearing of the suit was adjourned. Having taken note of the fact that the advocate by name, Sri K.S. Rajasekhar, who reported no instructions in I.A. No. 188 of 1996 had also appeared for the petitioners in E.P. No. 50 of 1996, the Court below disbelieved the plea that the petitioners came to know about the dismissal of I.A. No. 188 of 1996 only on 13.05.2008 and accordingly held that I.A. No. 364 of 2008 under Order 9 Rule 9 of C.P.C. which was filed beyond the period of 30 days from the date of dismissal of I.A. No. 188 of 1996 was barred by limitation. Thus I.A. No. 364 of 2008 was dismissed by order dated 19.10.2009.

11. Challenging the said order, dated 19.10.2009, Smt. L. Saraswathamma and P. Srilatha (petitioners 2 and 3 in I.A. No. 364 of 2008) filed C.R.P. No. 254 of 2010, whereas Smt. L. Uma Maheswari (petitioner No. 4 in I.A. No. 364 of 2008) filed CR.P. No. 494 of 2010 u/s 115 of C.P.C.

12. Sri S.V. Sundara Rajan, the learned Counsel appearing for the petitioners in C.R.P. No. 254 of 2010, contended that the Court below had grossly erred in holding that I.A. No. 364 of 2008 was barred by limitation. While placing reliance upon the decision of the Calcutta High Court in Mst. Nurnahar Bewa and Another Vs. Rabindra Nath Dev and Others, and P.N. Films Ltd. and Another Vs. Overseas Films Corporation Ltd., the learned Counsel submitted that Article 123 of the Limitation Act was not applicable to an application filed under Order 9 Rule 9 of C.P.C. for restoration of a miscellaneous application but the same was governed by Article 137 as per which the period of limitation was 3 years. Thus, according to the learned Counsel, I.A. No. 364 of 2008 filed in the year 2008 under Order 9 Rule 9 of C.P.C. for setting aside the dismissal order dated 7.6.2006 was well within the limitation.

13. The learned Counsel for the petitioners further contended that as there was no notice to the petitioners before dismissing I.A. No. 188 of 1996 on the ground that the advocate for the petitioners had reported no instructions, the Court below ought to have set aside the order of dismissal and allowed I.A. No. 364 of 2008 on that ground alone. In support of the said submission, the learned Counsel relied upon the decisions in Malkiat Singh and Another Vs. Joginder Singh and Others, , Thanneru Venkataiah (died) and Others Vs. Vadlamudi Kasaiah and Others, and Boda Venkataramanamma and Others Vs. I. Satyavathamma and Another,

14. Sri R. Prasad, learned Counsel appearing for the petitioner in C.R.P. No. 494 of 2010 while bringing to the notice of this Court that the advocate Sri K.S. Rajasekhar, who reported no instructions, had appeared only for the petitioners 2

and 3 in I.A. No. 188 of 1996 submitted that since the petitioner No. 4 had no knowledge of the proceedings in I.A. No. 188 of 1996, there was no justifiable reason for dismissing the application for restoration so far as petitioner No. 4 was concerned.

15. On the other hand, the learned Counsel for the respondents, Sri V.L.N.G.K. Murthy, who sought to justify the dismissal of I.A. No. 364 of 2008 as barred by limitation, further contended that the application under Order 9 Rule 9 of C.P.C. itself was not maintainable by virtue of Section 141 of C.P.C. for restoration of a miscellaneous application for setting aside an ex parte decree.

16. In the light of the rival contentions, the first question that arises for consideration is whether I.A. No. 364 of 2008 filed under Order 9 Rule 9 of C.P.C. was maintainable.

17. As per Section 141 of C.P.C. as it stood prior to the amendment by Act 104 of 1976, the procedure provided in the CPC in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction. While interpreting the said provision, it was held by the Courts that the expression "proceedings" u/s 141 of C.P.C. were of wider amplitude and they were not confined to only original proceedings. It was also held that the Rules under various Orders of C.P.C. were not absolutely procedural but they also dealt with substantive rights and therefore they were not outside the purview of Section 141. The said interpretation was reinforced by Amendment Act 104 of 1976 by inserting the Explanation to Section 141 of C.P.C. and making it clear that the expression "proceedings" includes proceedings under Order 9 of C.P.C. Section 141 as amended by Act 104 of 1976 is extracted hereunder:

141. Miscellaneous proceedings

The proceedings provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction.

Explanation: In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceedings under Article 226 of the Constitution.

18. Having considered the scope and object of Section 141 of C.P.C. in detail, a Special Bench of three-judges of the High Court of Calcutta in Mst. Nurnahar Bewa's case (1 supra) held that in view of the inclusive definition under the Explanation to Section 141 of C.P.C, whatever may be the nature of the proceedings initiated under Order 9 of C.P.C. such proceedings were to be treated as miscellaneous proceedings within the meaning of Section 141 of C.P.C. as amended and therefore the application for restoration of a miscellaneous case arising out of an application under Rule 4, 9 or 13 of Order 9 for restoration of the miscellaneous case if such miscellaneous case itself was dismissed for default was maintainable under Order 9 read with Section 141 of C.P.C.

19. Hence, there cannot be any dispute about the maintainability of I.A. No. 364

of 2008 under Order 9 Rule 9 of C.P.C. for restoration of I.A. No. 188 of 1996 for setting aside the ex parte decree in the suit.

20. So far as the next question i.e., whether I.A. No. 364 of 2008 was filed within limitation is concerned, the Court below while relying upon Article 122 of Schedule I to the Limitation Act, 1963 held that the application was barred by limitation. However, the learned Counsel for the Revision petitioners would contend that Article 122 has no application and the appropriate provision is Article 137 as per which the period of limitation shall be three years.

21. Article 122 and Article 137 of Schedule I to the Limitation Act, 1963 may be extracted hereunder:

Description of suit	Period of Time from which limitation period begins to run
-----	----- 122.
To restore a suit or appeal	Thirty days
The date of dismissal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs.	----- 137.
Any other application	Three years
When the right to apply which no period of limitation is accrues, provided elsewhere in this Division	-----

22. As could be seen, Article 122 deals with restoration of (i) Suit (ii) Appeal (iii) application for Review and (iv) Revision when the same were dismissed for default. In such a case, the period of limitation is 30 days from the date of dismissal. However, the definition of the word "suit" u/s 2(1) of the Limitation Act expressly excludes an appeal or an application. It is also clear that Article 122 has been confined only to an "application for review" but not miscellaneous application. Hence undoubtedly the application under Order 9 Rule 9 of C.P.C. for restoration of a miscellaneous application filed for setting aside an ex parte decree does not fall within the scope of Article 122.

23. This issue was also considered in detail by the Special Bench of three judges of the Calcutta High Court in Mst. Nurnahar Bewa's case (1 supra) and it was held as under:

The Statute of limitation is a disabling act and action for claiming rights flowing from various laws is barred with lapse of time as indicated in the Limitation Act. Limitation for an action in law, therefore, has to be found within the four corners of the statute. In the aforesaid circumstances, it appears to us that although the period of limitation for making an application for restoration of a suit dismissed for default under Order 9 of the Code is thirty days from the date of the order of dismissal, the application for restoration of miscellaneous case arising out of such application under Order 9, when such Misc. Case is dismissed for default, is not governed by the provisions of Article 122 of the Limitation Act in view of the fact that expressly in terms of the said Article 122, the miscellaneous case arising out

of an application under Order 9 is not attracted and the period of limitation in such case should be governed by Article 137.

24. Since there is no other specific provision in the Limitation Act, 1963 dealing with an application for restoration of miscellaneous applications, all such applications shall be governed by the residuary article of the Limitation Act i.e., Article 137 under which the period of limitation has been prescribed as three years from the date when the right to apply accrues.

25. In the instant case, I.A. No. 188 of 1996 was dismissed for default on 7.6.2006 and thereafter I.A. No. 364 of 2008 was filed under Order 9 Rule 9 of C.P.C. for its restoration in June, 2008. Thus it was well within the period of limitation of 3 years prescribed under Article 137. Therefore the conclusion of the Court below that I.A. No. 364 of 2008 was barred by limitation and there was no explanation for the delay was erroneous.

26. However, Sri V.L.N.G.K. Murthy, the learned Counsel for the respondents vehemently contended that even if the petition was filed within limitation, unless a sufficient cause was made out by the petitioners for their non-appearance, the application under Order 9 Rule 9 of C.P.C. for restoration cannot be allowed. The learned Counsel contended that having regard to the facts and circumstances of the present case, particularly the conduct of the petitioners, the Court below had rightly dismissed I.A. No. 364 of 2008 and therefore the order under Revision warrants no interference.

27. Under Order 9 Rule 9 of C.P.C. a party against whom an order of dismissal for default is passed has to satisfy the Court that there was sufficient cause for his nonappearance on the date when default occurred. Thus the existence of sufficient cause for the non-appearance of the party is a condition precedent. The law is well-settled that "sufficient cause" is a question of fact depending upon the circumstances of each case. What is sufficient cause has to be made out only on the basis of specific pleading supported by acceptable evidence.

28. In the instant case, I.A. No. 364 of 2008 under Order 9 Rule 9 of C.P.C. was filed by three petitioners - L. Saraswathamma, P. Srilatha and L. Uma Maheswari. The affidavit in support of the said application was sworn to by L. Saraswathamma on her behalf as well as the other petitioners. It was stated that the advocate reported no instructions in the petition without notice to her or other petitioners and that they had no knowledge about the dismissal of the application on 7.6.2006. It was also stated that she was under the impression that her advocate was looking after the matter and due to her old age she could not contact her advocate. For proper appreciation, it is necessary to extract the following paragraphs from the said affidavit:

I submit that I got filed I.A. No. 188/1996 in O.S. No. 33 of 1985 to set aside the ex parte decree dt. 11.8.1992 made in O.S. No. 33 of 1985. The said petition in I.A. No. 188 of 1996 in O.S. No. 33 of 1985 is filed within the period of limitation and I was under the impression that my advocate is looking after the matter and

due to my old age I could not contact my advocate. Thus there is a communication gap between me and my advocate.

It is submitted that recently i.e., on 18.5.2008 I approached my advocate at Hindupur and enquired with him with regard to the stage of the petition filed by me in I.A. No. 188 of 1996 in O.S. No. 33 of 1985. On my enquiry it was revealed that my advocate reported no instructions on 7.6.2006 and the petition in I.A. No. 188 of 1996 was dismissed for default.

It is submitted that my advocate did not informed me that he is going to report no instructions in the above said petition and thus without notice to me or other petitioners in the petition my advocate reported no instructions. Thus the petition stands dismissed for default.

29. In view of the finding recorded above that I.A. No. 364 of 2008 was filed within the period of limitation prescribed under Article 137 of the Limitation Act, it is not necessary to go into the question whether the petitioners had knowledge about the dismissal of I.A. No. 188 of 1996. Thus the only question that requires consideration by this Court is whether the petitioners have made out "sufficient cause" for their nonappearance on 07.06.2006.

30. As noticed above, it was pleaded in the affidavit filed in support of I.A. No. 364 of 2008 that there was communication gap between the 2nd petitioner L. Saraswathamma and her advocate since she could not contact her advocate due to her old age. However, there was no explanation as to why the other petitioners namely P. Srilatha and L. Uma Maheswari were not in touch with their advocate. In the counter filed by the respondent No. 4, the plea that the petitioners were not in contact with their advocate was specifically denied. The further plea of the petitioners that their advocate reported no instructions on 7.6.2006 without notice to any of the petitioners was also denied in the counter and it was asserted that for every adjournment one petitioner or other was attending the Court and closely following the proceedings in the Court. It was also contended in the counter that the advocate had reported no instructions at the instance of the petitioners and that the same advocate was appearing for the petitioners in E.P. No. 50 of 1996 also.

31. However, the petitioners did not choose to adduce any evidence, either oral or documentary, to substantiate their plea that they were not aware of the posting of I.A. No. 188 of 1996 on 7.6.2006. None of the petitioners came into the witness box to depose about the reasons for their non appearance on 7.6.2006. Even the contention that the advocate had reported no instructions without notice to the petitioners was not supported by any evidence. It is relevant to note that E.P. No. 50 of 1996 filed by the decree-holders for execution of the ex parte decree dated 11.8.1992 in O.S. No. 33 of 1985 was also pending on the file of the same Court. The Court below, having taken note of the fact that both I.A. No. 188 of 1996 and E.P. No. 50 of 1996 were being called on the Bench on the same day and that the same advocate by name K.S.

Rajasekhar was appearing for the petitioners both in I.A. No. 188 of 1996 and E.P. No. 50 of 1996, disbelieved the petitioners' version that their advocate had reported no instructions without their knowledge. In the absence of any evidence to establish the stand taken by the petitioners in their affidavit and particularly in view of the counter filed by the respondents categorically denying the version of the petitioners, I am of the opinion that the Court below was justified in holding that the petitioners failed to establish sufficient cause for their non-appearance on 7.6.2006.

32. The learned Counsel for the respondents, while pointing out that both in the suit i.e., O.S. No. 33 of 1985 and in I.A. No. 188 of 1996 one K.S. Rajasekhar appeared for the Revision petitioners and that he had reported no instructions on both the occasions resulting in ex parte decree in O.S. No. 33 of 1985 and dismissal of I.A. No. 188 of 1996 for default, submitted that it was apparent from the facts and circumstances of the case that reporting no instructions by the Counsel for the petitioners in I.A. No. 188 of 1996 was not bona fide and therefore I.A. No. 364 of 2008 was rightly dismissed by the Court below.

33. For proper appreciation of the above submission, it is necessary to notice some more facts which are also borne out of the record:

34. Pursuant to the decree dated 11.8.1992 in O.S. No. 33 of 1985, passed by the Additional District Judge, Hindupur, the decree-holders initially filed E.P. No. 6 of 1995. On constitution of the Court of Senior Civil Judge, Hindupur, the said Execution Petition was renumbered as E.P. No. 50 of 1996 on the file of the Court of the Senior Civil Judge, Hindupur, and the decree-holders filed E.A. No. 86 of 2000 for appointment of an advocate-commissioner. The said application was allowed by the Court of Senior Civil Judge, Hindupur by order dated 28.11.2000 and challenging the same, the Revision petitioners filed C.R.P. No. 5203 of 2000. The said Civil Revision Petition was dismissed by this Court by order dated 13.03.2001. Thereafter, E.P. No. 50 of 1996 was allowed by order dated 19.01.2007 directing the judgment-debtors to execute a sale deed as per the terms of the Agreement of Sale, dated 19.04.1980. Aggrieved by the said order, the Revision petitioners filed C.R.P. No. 607 of 2007. The said Revision Petition was allowed by this Court by order dated 1.11.2007 and the matter was remitted to the trial Court for consideration afresh. After allowing both the parties to adduce oral and documentary evidence and on appreciation of the same the learned Senior Civil Judge, Hindupur, again allowed E.P. No. 50 of 1996 by order dated 25.09.2008. The said order was challenged before this Court by the petitioners herein by filing C.R.P. No. 4416 of 2008. This Court, by order dated 29.04.2009 dismissed the said Civil Revision Petition. Though the matter was carried to the Supreme Court, the SLP was dismissed by order dated 14.09.2009. Pursuant thereto, a sale deed was also executed by the Court on 31.12.2009 in favour of the decree-holders. However, the delivery of the property could not be effected in view of the pendency of the present Civil Revision Petitions and the interim order of status quo granted by this Court.

35. In the light of the above undisputed facts, it is clear that the Revision petitioners have been pursuing the proceedings in one Court or other although to stall the execution proceedings. The plea of the respondents in the counter that the petitioners were being represented by the same advocate in I.A. No. 188 of 1996 and also E.P. No. 50 of 1996 and that the same were being listed for hearing before the same Court on the same day could not be disputed by the petitioners. They did not even choose to examine the advocate who was appearing on their behalf to explain the circumstances under which he had reported no instructions on 7.6.2006. In the circumstances, the conclusion of the Court below cannot be held to be erroneous on any ground whatsoever. It is manifest from the conduct of the petitioners that the whole attempt was to drag on the proceedings so as to defeat the decree granted in favour of the decree-holders.

36. However, the learned Counsel for the petitioners while relying upon the decisions in Malkiat Singh's case (3 supra), Thanneru Venkataiah's case (4 supra) and Boda Venkataramanamma's case (5 supra) vehemently contended that it is the duty of the Court to issue a notice to the parties when their advocate reported no instructions. Since no such procedure was adopted, the learned Counsel for the petitioners contended that on that ground alone I.A. No. 364 of 2008 ought to have been allowed and an opportunity should have been given to the petitioners to prosecute I.A. No. 188 of 1996.

37. In Malkiat Singh's case (3 supra), a suit was filed for damages. The defendants filed a written statement contesting the suit claim. During trial, two witnesses were examined for the plaintiff and they were also cross-examined by the Counsel engaged by the defendant. At that stage, the Counsel for the defendants pleaded no instructions before the Court and consequently an ex parte decree was passed against the defendants. Having come to know of the ex parte decree, the defendants engaged another Counsel and filed an application under Order 9 Rule 13 of C.P.C. for setting aside the ex parte decree. The trial court dismissed the application and the said order was confirmed by the District Court as well as the High Court. Then the matter was carried to the Supreme Court by the defendants. While observing that the record revealed that the defendants were neither careless nor negligent in defending the suit and that they had engaged a Counsel and were following the proceedings, the Supreme Court held as under:

In this fact situation, the trial court, which had admittedly not issued any notice to the appellants after their Counsel had reported no instructions, should have, in the interest of justice, allowed that application and proceeded in the case from the stage when the Counsel reported no instructions. The appellants cannot, in the facts and circumstances of the case, be said to be at fault and they should not suffer.

38. As could be seen, it was not laid down in the above decision that it was mandatory for the Courts to issue a notice to the parties when their advocate

reported no instructions. Having regard to the facts and circumstances of the case on hand, it was only held that the appellants therein should not suffer and accordingly the Appeal was allowed by the Supreme Court directing the trial Court to dispose of the suit in accordance with law.

39. In Thanneru Venkataiah's case (4 supra), it was contended before this Court on behalf of the petitioners therein that the petitioners were set ex parte only on the ground that their Counsel reported no instructions and that the trial Court did not clarify as to whether the Counsel issued any notice to the parties. Having found that except reporting no instructions the Counsel did not either issue notice to the petitioners nor filed an application before the trial court to relieve him of his obligation, this Court while concluding that an opportunity should have been given to the petitioners, observed as under:

Once a party engages an Advocate, the latter is under obligation to pursue the proceedings, on behalf of his client. If for any reason, he does not find it feasible to continue his appearance or assistance, he is required to put the client on notice, and inform the same to the Court. Order III C.P.C., subsists till the termination of the proceedings, unless it is brought to an end, in accordance with law.

40. In Boda Venkataramanamma's case (5 supra) also, no ratio as such was laid down as to the duty of the Court to issue notice to the party whenever a Counsel reports no instructions but it was only observed that it was the practice of the Court intimating the said fact to the party.

41. As held in Thanneru Venkataiah's case (4 supra) it is true that a duty is cast on the advocate to put his client on notice before reporting no instructions in a case. However, in the instant case, in spite of the specific allegation in the counter filed by the respondents that the petitioners were very much in touch with their Counsel and that the Counsel had reported no instructions only at the instance of the petitioners, the petitioners did not choose to let in evidence to establish their plea that they had no knowledge of the proceedings. In the circumstances, the Court below rightly disbelieved the version of the petitioners. Consequently the Court below cannot be held to have committed any error in having declined to restore I.A. No. 188 of 1996. Hence failure of the trial Court to issue a notice to the petitioners before recording "no instructions" reported by their Counsel, in the peculiar facts and circumstances of the present case is not a justifiable ground for restoration of I.A. No. 188 of 1996. Particularly in view of the admitted fact that E.P. No. 50 of 1996 and I.A. No. 188 of 1996 were being listed before the Court on the same day and the same advocate was appearing for the petitioners in both the cases, there was no need to issue any notice to the petitioners and the dismissal of I.A. No. 188 of 1996 for default cannot be held to be erroneous.

42. In the totality of the facts and circumstances of the case, this Court is satisfied that no sufficient case was made out by the petitioners for their

nonappearance on 7.6.2006 and therefore the discretion exercised by the Court below in having declined to set aside the dismissal order dated 7.6.2006 in I.A. No. 188 of 1996 did not suffer from any perversity or unreasonableness. No other ground could be made out by the petitioners to show that the order under Revision suffered from any material irregularity in exercise of the jurisdiction vested under law.

43. Hence, both the Civil Revision Petitions are devoid of any merit and the same are hereby dismissed. No costs.