
(1999) 02 AP CK 0005
In the Andhra Pradesh High Court
Case No : CRP No. 4546 of 1997

Lingala Apalanarasayya and others

APPELLANT

Vs

Lingala Mallayamma and others

RESPONDENT

Date of Decision : 24-02-1999

Acts Referred:

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

Citation : (1999) 2 ALD 621 : (1999) 2 ALT 643 : (1999) 1 APLJ 321

Hon'ble Judges : V. Bhaskara Rao, J

Bench : Single Bench

Advocate : Mr. Badana Bhaskara Rao, for the Appellant; Mrs. M. Bhaskara Lakshmi, for the Respondent

Judgement

1. The order in IA No. 189 of 1997 in OS No.3 of 1980 on the file of the Junior Civil Judge, Kothavalasa, dated 8-9-1997 refusing to condone delay of six years, one month and four days in filing the petition under Order 9 Rule 13 CPC for setting aside the ex parte decree u/s 5 of the Limitation Act is assailed in this CRP.
2. The facts giving rise to this CRP as emerging from the affidavit of one of the petitioners, who is D5 in the suit, are as under :
3. The suit was decreed on 17-3-1987 and that an appeal AS No.40 of 1987 was filed in the District Court, Vizianagaram, entrusting the matter to Sri Boddu Satyanarayana, advocate of Vizianagaram. He was expecting a communication from him, but he did not get any information. While so he received notice in EP No. 172 of 1996 on 30-12-1996 and his enquiries revealed that the suit was decreed ex parte on 13-3-1991. It is asserted that he was not aware of the above ex parte decree till he received the notice in EP No.172 of 1996. Hence he sought for condonation of delay.
4. The above petition is resisted by the respondents/plaintiffs by filing a counter.

It is stated that the suit was contested and then an appeal was filed and that the appellate Court remanded the suit and after such remand it resulted in ex parte decree on 13-3-1991. The petitioners averment that they did not enquire about the matter from 1987 to 1997 is said to be false and hence there are no reasonable grounds to condone the delay.

5. The learned Junior Civil Judge on a consideration of rival contentions and after noticing the fact that AS No.40 of 1987 was allowed setting aside the decree in OS No.2 of 1980 and remanding the matter to the lower Court for fresh disposal and that the ex parte decree therein was passed on 13-3-1991 upon the Counsel for the revision petitioners/defendants reporting no instructions, held that the contention of the revision petitions that they had no knowledge after remand cannot be accepted inasmuch as Sri M.V. Sarma, filed memo of appearance even after the remand. He then noticed that the notice in EP was served on 30-12-1996 upon revision petitioners 1, 3, 5 to 7 and on 18-3-1997 upon the remaining petitioners, whereas the petition for condonation of delay was filed on 28-4-1997. On that basis it is held that there is absolutely no explanation for the delay caused after the service of notices in the EP. At the same time it is held that the version of the revision petitioners that they were expecting a communication from their advocate cannot be accepted, since their advocate filed memo of appearance even after remand. Thus the petition for condonation of delay has been dismissed.

6. The learned Counsel for the revision petitioners Sri Badana Bhaskara Rao, relying upon the decisions reported in Union of India v. Sri Simon, AIR 1990 All 174, Sagayam Engineering Works Vs. Srivatsa Tube Corporation, , and The State of West Bengal Vs. The Administrator, Howrah Municipality and Others, , strenuously contended that the expression "sufficient cause" should be liberally construed so as to advance substantial justice. According to him there was no negligence, whatsoever, on the part of the revision petitioners and the delay, if any, was on account of their Counsel not sending a communication and hence CRP may be allowed and the delay in filing the petition for setting aside the ex parte decree may be condoned.

7. On the other hand, Smt. Bhaskara Lakshmi, learned Counsel for the respondents/plaintiffs contended that even if the date of service of notice in EP which was in December, 1996 is taken into consideration, there is no reason for not filing the present petition soon thereafter. She pointed out that the present petition is filed only in April, 1997 and hence the learned Junior Civil Judge has rightly held that there is no explanation for the period between the date of service of notices in EP and the date of filing of this petition. Regarding the earlier period of about six years she contended it is for the party to enquire from their Counsel about the stage of the case and the fact that there was delay of about six years would show that they have not taken any care to contact their advocate and hence there are laches on their part. Thus she supported the impugned order.

8. I carefully considered the contentions of both sides. The delay about six years which is quite enormous has to be split-up into two parts. One is from the date of filing of appeal before the District Court and receipt of notices in EP. The explanation of the revision petitioners is that they did not hear from their Counsel about the stage of the case and only on receipt of notices in the EP they came to know that the ex parte decree was passed. It is for consideration whether the above explanation is fit to be accepted or not. The other period is between the date of receipt of notices in the EP in the month of December, 1996 and the date of filing of the petition for condonation of delay i.e., on 28-4-1997. I carefully perused the affidavit of the revision petitioner-D5 which is filed in support of IA No. 189 of 1997. It is not his case that he proceeded to his advocate soon after receiving the above notices and instructed him to take steps for filing a petition for setting aside the ex parte decree or that his advocate caused delay in filing the petition. In fact there is no explanation of any kind insofar as the second period is concerned. Hence the learned Junior Civil Judge has rightly held that the delay during this period has not been explained.

9. Insofar as the period of about six years during which time the revision petitioners were expecting a communication from their Counsel is concerned, I am of the view that an affidavit of the concerned advocate should have been placed on record. The advocate concerned should have stated whether the version of the revision petitioners is true or not and if there was any understanding between them that a communication will be sent by him as and when necessary and if so why such a communication was not sent. In the absence of an affidavit from the concerned advocate, I am unable to place any reliance upon the affidavit of the party. After all the delay is as enormous as six years. The revision petitioners are also so many in number. Therefore, one or the other revision petitioner was expected to contact his advocate to find out the stage of the case. It is not in dispute that the appeal was disposed of and the suit was remanded to the lower Court for fresh disposal. It is strange that the advocate concerned would not have informed about the result of the appeal. It is also noteworthy that one Sri M.V. Sarma, advocate, filed memo of appearance after the remand of the suit. If that is so he too would have taken care to inform the party that the matter has been remanded for fresh disposal. In any event, the affidavit of the concerned advocate would have thrown light upon these aspects. Hence the version of the revision petitioners which is as bald as anything, for condonation of delay of as enormous period as six years cannot be accepted.

10. I perused the case law relied upon by the learned Counsel for the revision petitioners. It is no doubt true that the expression "sufficient cause" should be construed liberally so as to advance substantial justice. But the Supreme Court has qualified the above ratio with the words "when no negligence or inaction or want of bona fide is imputable to a party". This is not a case where the above ratio can be applied in view of the fact that there has been negligence as well as inaction on the part of the revision petitioner. I am unable to follow the ratio in

Sagayam Engineering Work's case (supra), for the simple reason that there is no material to show that the advocate concerned was at fault. There is absolutely no material to show that there was any understanding between the revision petitioners and their Counsel that a communication would be sent by him. Likewise the Judgment reported in Sri Simon's case (supra) is also not applicable as the petitioner's affidavit on its own shows that no steps were taken for nearly four months after receipt of the notices in the EP and hence it cannot be said that the revision petitioners acted with promptitude as held therein.

11. For the above reasons, I am unable to find any merit in this revision petition and the same is accordingly dismissed, but without costs.