
(2001) 03 AP CK 0002
In the Andhra Pradesh High Court
Case No : CRP No. 822 of 2001

Majeti Siva Vara Koti Prasad

APPELLANT

Vs

Chalapathi Chit Fund, Private Limited, Guntur

RESPONDENT

Date of Decision : 23-03-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 11(2), 115
Limitation Act, 1963 — Article 126

Citation : AIR 2001 AP 388 : (2001) 3 ALD 488 : (2001) 3 ALT 318 : (2001) 1 APLJ 320 : (2001) 3 CivCC 130

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : Mr. D. Madhava Rao, for the Appellant;

Judgement

Motilal B. Naik, J.—The petitioner herein is the defendant in OS No.1290 of 1998 on the file of the III Additional Junior Civil Judge, Guntur which was filed for recovery of certain amounts. The suit was decreed on 26-6-2000. However, an application in IA No. 1041 of 2000 was filed by the petitioner under Order 20, Rule 11(2) CPC, seeking an order from the Court permitting him to pay the decretal amount in instalments at the rate of Rs.5,000/- per month. The Court below considered this aspect and held that the decree Was passed on 26-6-2000 and the petition was filed after passing of the decree, i.e., on 31-7-2000. The Court further held that in terms of Article 126 of the Limitation Act, for payment of decretal amount in instalments, such petition has to be filed within 30 days from the date of passing the decree but in the instant case, the petition was filed beyond the limitation period prescribed, and on that ground dismissed the petition by the impugned order dated 29-11-2000 against which the present revision is filed.

2. It is stated by the Counsel for the petitioner that as provided under Order 20, Rule 11(2) CPC, when an application is filed, even after passing a decree, by the judgment-debtor seeking instalments for payment of the decretal amount, the

Court is entitled to pass an appropriate order granting instalments if the other side gives consent. Counsel emphasising on the provisions contemplated under Order 20, Rule 11(2) CPC, stated that the trial Court ought not to have dismissed the application invoking Article 126 of the Limitation Act, and stated that this is a case which requires interference from this Court.

3. Heard the Counsel for the petitioner and perused the order impugned.

4. For better appreciation of the issues involved, it is necessary to trace the relevant provisions viz., Order 20, Rule 11(2) CPC and Article 126 of the Limitation Act.

Order 20, Rule 11(2) CPC:

Order, after decree, for payment by instalments :--After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

Article 126 of the Limitation Act:

Description of suit/proceeding	Period of limitation	Time from which period begins to run
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(1)	(2)	(3)
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Article 126 -For the payment of the amount of a decree by instalments	30 days	Date of the decree
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5. It is true that Order 20, Rule 11(2) CPC, provides for a situation arising out of a contingency where a defendant seeks instalments after decree is passed. Normally, before passing a decree, if the defendant seeks instalments in the written statement, it would be open to the Court on the consent being extended by the other side, to grant instalments for payment of decretal amount in pursuance of decree that would be passed in favour of the plaintiff. Even otherwise, the second facet of the said provision also envisages such a situation even after decree is passed if a petition is filed, the Court may pass an instalment decree on the consent being given by other side. However, such filing of petition after passing of decree is governed under Article 126 of the Limitation Act which specifically provides for such an application to be filed within 30 days from the date of passing of the decree.

6. In the instant case, admittedly, the decree was passed on 26-6-2000. If the petitioner desired seeking instalments as provided under Order 20, Rule 11(2) CPC, he should have moved the Court below by an appropriate petition before the expiry of thirty days period which would expire in this case by 25-7-2000. However, the petitioner has moved the petition IA No.1041 of 2000 only on 31-7-2000 and thus there is delay of more than five days in preferring such

petition. The lower Court was justified in rejecting such application in view of the specific provision provided under Article 126 of the Limitation Act. In my considered view, the order passed by the Court below rejecting the application, requires no interference from this Court u/s 115 CPC.

7. This revision petition is accordingly dismissed. No costs.