

(2007) 11 AP CK 0086
In the Andhra Pradesh High Court
Case No : CRP No. 6171 of 2006

Mamidi Rama Krishna Prasad (died) by LRs.	APPELLANT
Vs	
Uppuluri Satyavathi	RESPONDENT

Date of Decision : 12-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23, Order 41 Rule 23A, Order 41 Rule 25, Order 41 Rule 26A, Order 9 Rule 9
Limitation Act, 1963 — Section 5

Citation : (2008) 1 ALD 807 : (2008) 2 ALT 590

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : D.V. Seetharama Murthy, for the Appellant; V.S.R. Anjaneyulu, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This revision is filed against the order, dated 21.8.2006, passed in LA. No. 1588 of 2005 in O.S. No. 596 of 1988, on the file of the I Additional Senior Civil Judge, Visakhapatnam. The facts that gave rise to the filing of the revision, stated in brief, are as under:

2. The deceased-1st petitioner filed the suit, against the respondent, for the relief of specific performance of an agreement of sale. The suit was decreed on 16.11.1998. The respondent filed A.S. No. 358 of 1999, before this Court. The appeal was allowed on 21.11.2001, and the matter was remanded to the trial Court, for fresh disposal. It was also observed that the person, who is said to have purchased the property during the pendency of the proceedings, must be impleaded as defendant.

3. The petitioners state that though the appeal was disposed of by this Court, in the year 2001 itself, nothing was forthcoming for years together, and having waited sufficiently, they filed an application, being IAGR No. 7746 of 2004, on 9.11.2004, before the trial Court, with a prayer to take up the hearing of the

suit, after remand. It is said to have been returned, with several endorsements, to the effect that the record was not yet received by the trial Court. Finally, it is said to have returned on 4.8.2005, with an endorsement that the suit was dismissed for default on 28.3.2002, for non-prosecution. Soon thereafter, an application was filed, under Order IX Rule 9 CPC, with a prayer to set aside the order dated 28.3.2004. Since there was delay of 1228 days, in presenting the same, they filed IA No. 1588 of 2005, u/s 5 of the Limitation Act.

3.1 The petitioners contend that the trial Court itself informed them that the hearing of the suit could be taken up, on account of the non-receipt of records, and that neither themselves, nor the original plaintiff, have received any notice of hearing from the Court, after the matter was remanded by this Court. It is their case that if the date of knowledge is taken into account, there is no delay, and the trial Court ought to have condoned it, paving the way for considering the application for setting aside the order, dated 28.3.2002. The trial Court dismissed the I.A., through the order under revision. Hence, this revision.

3.2 Sri D.V. Seetharama Murthy, learned Counsel for the petitioners, submits that Rule 26-A of Order XLI CPC, requires that whenever a matter is remanded to trial Court, the date of next hearing must be fixed for the appearance of the parties, so as to enable them to take further steps, and in the instant case, such a date was neither fixed, much less communicated to the parties. He further submits that the trial Court itself was not certain and consistent as to the nature of proceedings that have ensued, ever since the matter was remanded. Learned Counsel submits that it was only on 4.8.2005, that the petitioners were informed about the dismissal of the suit for non-prosecution, and soon thereafter, the application was filed.

4. Sri B. Purushotham Reddy, learned Counsel appearing for the respondent, on the other hand, submits that the original plaintiff, as well as the petitioners herein, were very much aware of the remand of the matter to the trial Court, and necessary steps ought to have been taken to pursue the proceedings. He contends that by the time the suit was dismissed for non-prosecution, the sole plaintiff was very much alive, and he did not take any steps. According to the learned Counsel, several applications were filed, only with a mala fide intention, to knock away the valuable property.

5. The short question that arises for consideration in this CRP is, as to whether the petitioners made out a case for condonation of delay of 1228 days. The delay is enormous and requires a very strong and valid explanation for condonation thereof. In the absence of the same, the valuable right that had accrued to the respondent, on account of the dismissal of the suit for non-prosecution, cannot be taken away.

6. So far as the parameters for condonation of delay are concerned, hardly there exists any uniformity, or straightjacket formula. The facts and circumstances that are pleaded by the party, seeking condonation of delay, on the one hand, and the

nature of resistance that is offered thereto, on the other hand, assume significance. For the most part of it, it is the diligence exhibited by the parties, and the reasons, on account of which the remedy could not be availed within the stipulated time that become relevant. Extent of delay no doubt would have its own role to play in the matter. However, if satisfactory and valid explanation is not forthcoming, the application for condonation of delay of even few days, is liable to be rejected, whereas, delay of fairly large extent also can be condoned, if valid explanation is offered. The decided cases virtually proceed on these lines, and by and large, they reflect the adjudication of the facts that are specific to that case.

7. Reverting to the facts of the present case, it is a matter of record that the decree for specific performance of agreement of sale, granted in favour of the deceased-1st petitioner, by the trial Court, was set aside by this Court, through its judgment dated 21.11.2001, in A.S. No. 358 of 1999. The matter was remanded for fresh adjudication and disposal. Specific direction was issued to the effect that the subsequent purchaser must be impleaded as a defendant. The course of action to be adopted, whenever a matter is remanded by an appellate Court, is indicated in Rule 26-A of Order XLI CPC. It reads as under:

Rule 26A: Where the Appellate Court remands case under Rule 23 or Rule 23-A, or frames issues and refers them for trial under Rule 25, it shall fix a date for the appearance of the parties before the Court from whose decree the appeal was preferred for the purpose of receiving the directions of the Court as to further proceedings in the suit.

The object of this rule is to enable the parties to appear before the Court, to which the matter is remanded and to take further steps. The record does not disclose that any such date was fixed by this Court, while remanding the matter. It appears that the date was not fixed, on account of the fact that the transmission of record would take its own time. Even in the absence of a date fixed by this Court, the trial Court ought to have taken steps, to fix a date and inform the parties, or their Counsel, so that they can participate in the proceedings. Unless the parties are informed of any date of hearing, either by the appellate Court, which remanded the matter, or by the trial Court, the parties cannot be expected to be in indefinite waiting and watching.

8. An application, being I.A.G.R No. 7746 of 2004, was filed on 9.11.2004, with a prayer, requesting the trial Court to take up the hearing of the suit, after it was remanded. This was nearly two years, after the appeal was allowed. On 20.1.2005, an endorsement was made to the effect that the record was given to the Central Record Room and internal correspondence was undertaken. On 23.2.2005, it was returned with the following endorsement:

Returned. "As per the endorsement of Hon"ble District Court, Visakhapatnam on the request letter sent to the Hon"ble District Court, Visakhapatnam by this Court in Dis. No. 28/dated 1.2.2005 and requisition letter returned to this Court

by the Hon"ble District Court, Visakhapatnam on 18.2.2005 stating that the entire record in O.S. No. 596 of 1988 submitted to Hon"ble High Court, Hyderabad in A.S. No. 358 of 1999. Hence, this petition is returned. Returned time 7 days.

The petition was represented, with a submission that the record in the suit was retransferred by the High Court to the trial Court itself, during January 2002 itself, and that the hearing of the suit was not taken up. It was only on 4.8.2005, the petitioners were informed that the suit was dismissed on 28.3.2003 for non-prosecution. Soon thereafter, they filed application under Order IX Rule 9 CPC, with an application to condone the delay, which is calculated from the date of dismissal.

9. If the petitioners had the knowledge of the suit being taken up for hearing, or that they were put on notice, the mere fact that an application was filed subsequently, with a request to take up the hearing of the appeal, or the various endorsements therein, would become irrelevant. Therefore, much would depend upon the proceedings that ensued before the trial Court, soon after it received the record from this Court, on remand. On insistence by this Court, learned Counsel for the petitioners has made available the copy of the docket proceedings in the suit, commencing from 21.11.2001 till 28.3.2002. No other proceedings have taken place, earlier to 21.11.2002.

10. A perusal of the same discloses that on 21.11.2002, the office of the trial Court took note of the fact that the appeal was allowed and the suit was remanded. Steps were initiated, for procuring the record from the Court of District Judge, which normally receives the records from the High Court. On 5.2.2002, the necessary record was received, and the office had put the following note:

Immaterial part of the record received from the Hon"ble District Court, Visakhapatnam. Your honour may order notice to the parties by the Court in the interest of justice. Plaintiffs Advocate died. Hence, your honour may order notice to the plaintiff as well as defendants.

The learned Presiding Officer endorsed, "Notice to plaintiff and defendants. Call on 18.2.2002". The docket proceedings from 18.2.2002 to 28.3.2002, read as under:

18.2.2002: Notices to defendant Counsel i.e., Sri L.J. Srinivas by the Court on 14.2.2002. Notice to plaintiff sent by the Court in Dis. No. 1591, dated 16.2.2002.

Plaintiff called absent.

26.2.2002 : Notice by RP not yet returned. Sri L.J. Srinivas filed counter of the defendant.

8.3.2002 : Notice to plaintiff by R.P. returned as there is no such person.

The fresh urgent notice by 22.3.2002. Defendants to furnish address if sought.

22.3.2002 : For furnishing address of plaintiff by the defendant Counsel. No representation on behalf of defendant. Call on 28.3.2002.

28.3.2002 : For furnishing address of the plaintiffs by defendant. The Counsel for defendant represented that the defendant does not know the present address of the plaintiff. A perusal of the High Court papers in AS No. 358 of 1999 shows that plaintiff was represented by a Counsel but despite the same, plaintiff has not chosen to appear before the Court to prosecute the same. Hence, the suit is dismissed for default and non-prosecution. No costs.

From a reading of these docket orders, it becomes evident that notice was served only upon the Counsel for the defendant, and a conscious decision was taken by the trial Court, to cause service of notice on the plaintiff, since his Advocate in the trial Court died. However, no serious effort was made to put the petitioners on notice about the hearing of the suit.

11. The curious part of the matter is that the trial Court was not even aware of the development that took place in the year 2002, when it dealt with IAGR No. 7746 of 2004. It was only on 4.8.2005, that the trial Court realized that the suit was dismissed for non-prosecution. There is nothing to indicate that the petitioners were aware of these developments, at any point, earlier thereto. While this is what the record discloses, the trial Court has virtually proceeded on tangent lines, while examining the application filed for condonation of delay. It made the following observation in the order under revision:

In the above matter, admittedly the Hon''ble High Court disposed of the appeal in A.S. No. 358 of 1999 on 21.11.2001 and remitted back the suit to the Lower Court. The Lower Court received the record from the Hon''ble High Court and taken up the matter after remand on 5.2.2002 by which the original plaintiff was alive. The Court then issued notice to both sides and dismissed the suit on 28.3.2002 for non-prosecuting of the case by the plaintiff by which time the plaintiff was alive and that the sole plaintiff died on 16.9.2002.

The mere issuance of notice was treated as sufficient, without verifying whether it was served upon the sole plaintiff at all. When the petitioners categorically stated that they did not have the knowledge of the dismissal of the suit, till the endorsement was made on IAGR No. 7746 of 2004, the trial Court unfortunately rejected the plea, on the ground that they did not approach the Court, before filing that application. It reads as under:

There is no material placed before this Court by the petitioner to show that previously, after the death or prior to the death of sole plaintiff in this suit before filing of this petition in GR No. 7746 of 2004, the petitioner approached this Court to know the fact whether the record in this suit was received by this Court from the Appellate Court.

This amounts to, virtually begging the question. When valuable rights of the

parties are involved, such a casual approach is untenable. The petitioners cannot be penalized for the improper handling of the matter by the trial Court, be it, in ensuring servicing of notice on the parties, or in keeping track of its own record, as is evident from the various endorsements made on IAGR No. 7746 of 2004. In view of the above, this Court is satisfied that the delay was properly explained. The inconvenience, to which the respondent is subjected to, may be compensated, by awarding costs.

12. Hence, the CRP is allowed, and the order under revision is set aside. Consequently, LA. No. 1588 of 2005 is allowed, on payment of costs of Rs. 10,000/-(ten thousand only) to the respondent, within four weeks from today. Both the parties shall appear before the trial Court on 17.12.2007, and proceed with the trial of the suit, as directed by this Court in the order in A.S. No. 358 of 1999.