
(2004) 07 AP CK 0020
In the Andhra Pradesh High Court
Case No : CRP No. 1990 of 2004

Manthrala Chandrakala and Others	Vs	APPELLANT
Mandan Janakiram Singh and Others		RESPONDENT

Date of Decision : 13-07-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4, 141
Limitation Act, 1963 — Section 5

Citation : (2004) 5 ALD 156 : (2004) 5 ALT 219

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M. Venkat Ram Reddy, for the Appellant; A. Rajasekhar Reddy, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This. CRP is filed against the order dated 23-2-2004 passed by the learned District Judge, Nalgonda, in I.A No.2493 of 2003 in an unregistered appeal. Through the order under revision, the learned District Judge, refused to condone the delay of 231 days, in presenting the appeal.

2. The 1st respondent filed O.S. No.80 of 1996 on the file of the Senior Civil Judge, Miryalguda, against one Mantrala Ravinder Reddy, for the relief of recovery of possession of 154 sq.yards of land, or in the alternative, for payment of Rs.52,000/-, with interest at 12% per annum. According to him, he purchased the said plot from the sole defendant and subsequently, it was found that the plot was covered with road. During the pendency of the suit, the sole defendant died. The petitioners herein as well as Respondents 2 and 3 were brought on record as his legal representatives. Subsequently, the 4th respondent was also impleaded as defendant No.8. Through its judgment dated 7-11-2002, the Trial Court decreed the suit.

3. The petitioners herein presented the appeal against the decree in O.S.No.80 of 1996 in the Court of District Judge, Nalgonda. Since there was a delay of 231

days in presenting the appeal, they filed I.A.No.2493 of 2003, u/s 5 of the Limitation Act. The 2nd petitioner filed an affidavit in support of the I.A., stating that the suit was initially filed against their father, and after his death, himself and other petitioners were brought on record. According to them, some of them being minors, and not conversant with the Court procedure, they were dependant on the advice of Defendants 6 and 7 (Respondents 2 and 3 herein), who are their paternal aunts. It is stated that they were not aware of the decree, till E.P. was filed, and soon thereafter, they have taken steps to get the appeal preferred.

4. The 1st respondent filed counter-affidavit, resisting the application. It was stated that the 2nd petitioner was conversant with the procedure, and in fact, he deposed as DW-2 in the suit. The other respondents have not opposed the application.

5. Learned Counsel for the petitioners submits that the lower appellate Court has not taken any of the aspects pleaded by the petitioners into account and dismissed the application. He contends that, being only legal representatives of the deceased-1st defendant, petitioners were not aware of the Court procedure, and Respondents 2 and 3, on whom they depended, appear to have colluded with the 1st respondent.

6. Learned Counsel for the 1st respondent, on the other hand, submits that the petitioners remained indifferent even after the suit was decreed, and except pleading certain general and vague grounds, they did not explain the delay to the satisfaction of the lower appellate Court.

7. Petitioners filed I.A. No.2493 of 2003 u/s 5 of the Limitation Act (for short "the Act"), to condone the delay of 231 days in presenting the appeal, against the judgment and decree in O.S. No.80 of 1996 on the file of the Senior Civil Judge, Miryalguda. In considering the application filed u/s 5 of the Act, the Courts are required to examine the grounds pleaded by the concerned party, for condonation of delay. Howsoever advisable it may be, that the parties shall pursue their remedies with utmost promptitude; there are instances where they are prevented from being prompt, for variety of reasons, in pursuing the same. It is for this reason, that Section 5 of the Act, empowers the Courts to condone delays, in presenting the appeals, or other related matters, on being satisfied about the reasons. The principle underlying Section 5 is that the remedies provided to citizens, under various statutes, are not denied, on the grounds of mere delay. A decent balance is to be maintained, between requiring the parties to be diligent, on the one hand, and to show a semblance of latitude to those who are otherwise prevented from pursuing such remedies within time.

8. All the petitioners and Respondents 2 and 3 herein were I brought on record as legal representatives of the deceased-1st defendant. They were not parties to the transaction between the 1st respondent herein and the 1st defendant. They had to defend themselves in the transaction, which was undertaken by the 1st

defendant. It is true that the 2nd petitioner deposed as DW-2 in the suit. However, it should not be forgotten that, by the time he was brought on record, his age was just 21 years. Petitioners 3 and 4 were minors, and the 1st petitioner is a household woman. They depended upon Respondents 2 and 3, the sisters of the deceased-1st defendant, and one of them is an advocate. Petitioners specifically pleaded that they depended on Respondents 2 and 3 and that they were not even informed of the result of the suit.

9. When the petitioners have pleaded several facts, touching on the merits, the lower appellate Court was supposed to discuss the same, with reference to the contention of the 1st respondent. It is rather surprising that the lower appellate Court had chosen to dispose of the I.A., through one sentence, which reads as under:

"The petitioners, who contested O.S. No.80/1996, in which P-2 gave evidence as DW-2, having not satisfied the Court that they had sufficient cause for the delay of 231 days from 6-12-2002 to 25-7-2003 in presentation of the appeal and the affidavit filed in support of I.A.2493/2003 does not indicate any justifiable reason, as is seriously opposed by R-1, I see no merit in the petition which is dismissed with costs."

10. From a reading of the same, it is difficult to discern as to which aspect of the matter weighed with the Court, in dismissing the application. The orders passed by the Courts are required to be clear, elaborate, and to deal with the various contentions raised by the parties. The ultimate discretion in the matter of granting relief vests with the Court. At the same time, the view taken by the Court is required to be supported by reasons. It is only when discernible reasons are recorded, that the appellate or revisional Courts would be in a better position to appreciate the context, in which the order came to be passed. The principles underlying Rule 4 of Order 22 C.P.C., cannot be confined to the judgments in suits alone. They apply to disposal of the applications with equal force, as is evident from Section 141 C.P.C. Unfortunately, the lower appellate Court has chosen to pass an order, which does not fit into the process of adjudication, much less to the principles underlying Order 20 C.P.C. It ought to have discussed the matter with a little elaboration, since valuable rights of the petitioners are involved.

11. Coming to the merits of the matter, it is evident that the petitioners were brought on record only as legal representatives, and that they were not parties to the suit transaction at all. The fact that they were dependent on the advice tendered by respondents 2 and 3 herein, was not seriously denied, either by the 1st respondent, or respondents 2 and 3 themselves. It should not be forgotten that appeal is a continuation of the suit, and such a remedy can be denied, if only there was a deliberate indifference or negligence on the part of those who seek the remedy. Having regard to the facts and circumstances of the case, this Court is of the view that the delay needs to be condoned, subject to certain terms.

12. Hence, the order under revision is set aside, and the delay in presenting the appeal is condoned, on condition that the petitioners pay a sum of Rs.500/- (Rupees five hundred only) to the Counsel for the 1st respondent. The amount is paid across the bar. Hence, the I.A No.2493 of 2003 shall stand allowed. Since the delay is condoned, the lower Appellate Court shall number the appeal. It shall pass appropriate orders on the application said to have been filed for grant of stay, duly protecting the interests of both the parties. No costs.

Accordingly, the CRP is allowed.