
(1948) 09 MAD CK 0006
In the Madras High Court

Maragani Ramalingam and Others

APPELLANT

Vs

Maridu Koteswara Rao

RESPONDENT

Date of Decision : 10-09-1948

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1949) 1 MLJ 144

Hon'ble Judges : Satyanarayana Rao, J

Bench : Division Bench

Judgement

Satyanarayana Rao, J.—This civil revision petition is filed against the order of the learned Subordinate Judge, Masulipatam, excusing the

delay in seeking to set aside the abatement caused by the death of the fourth defendant in the suit. The fourth defendant died on the 26th October,

1945. The application for adding the legal representatives was filed by the plaintiff on the 5th April, 1946. He became aware of the death of the

fourth defendant only when the summons in the suit was returned with the endorsement that the fourth defendant died. This was made known to the

plaintiff on the 13th March, 1946. Within less than a month from that day, he filed the application for impleading the legal representatives. He later

filed applications to set aside the abatement and also to excuse the delay in seeking to set aside the abatement. In the affidavit filed in support of the

application to set aside the abatement, the plaintiff definitely stated that he became aware of the death of the fourth defendant only on the 13th

March, 1946, when it was made known in Court by the return of the summons. Thereafter, presumably some time must have been taken for the

plaintiff to ascertain the legal representatives of the fourth defendant and also to ascertain the actual date of the death of the fourth defendant.

Within less than a month from that date, the application was filed to implead the legal representatives. The learned Subordinate Judge in view of

these circumstances was of opinion that the plaintiff learnt about the death only on the 13th March, 1946, and that there was sufficient cause to

excuse the delay in seeking to set aside the abatement. He allowed the petition filed by the plaintiff u/s 5 of the Limitation Act, excused the delay to

set aside the abatement and directed the legal representatives to be impleaded as parties.

2. The question of excusing the delay and the question whether sufficient cause for excusing the delay was made out are essentially within the

discretion of the lower Court. There is no ground for interfering with the exercise of such discretion u/s 115 of the Civil Procedure Code. All that

was urged in this revision petition on behalf of the petitioners was that there were not even allegations in the affidavit disclosing the grounds for

excusing the delay in seeking to set aside the abatement. I am not, however, able to accept this contention for the reason that in the affidavit filed in

support of the application to set aside the abatement, the plaintiff definitely stated that he became aware of the death only by information which was

conveyed to him in Court on the 13th March, 1946. This allegation was not seriously challenged and the subsequent delay of about less than a

month was certainly due to the fact that after he became aware of the death of the fourth defendant the plaintiff had to get information about the

whereabouts of the legal representatives and who the legal representatives were. In these circumstances, I see no ground for interfering with this

Order of the learned Subordinate Judge.

3. My attention has been drawn to the decision of Horwill, J., in C. R. P. No. 636 of 1947, which arose out of a similar application made by the

plaintiff in O.S. No. 5 of 1946. The order of the learned Judge was based on two reasons : firstly that the affidavit in that case did not contain an

explanation why the petitions were not filed within time and secondly that the learned Judge gave no reasons in his order for setting aside the

abatement. The fact that the petitioner was not aware of the death of the fourth defendant till 13th March, 1946, is certainly sufficient ground to

explain the delay in making this application. If he was not aware of the death, it cannot with reason be contended that he should have made the

application earlier or should explain the delay. His ignorance of the death is really the reason for the delay. The learned Subordinate Judge in the order now before me gave as the reason for excusing the delay that the plaintiff was unaware of the death of the fourth defendant till 13th March, 1946, and that ignorance constituted a sufficient cause within the meaning of Section 5 of the Limitation Act for excusing the delay in seeking to set aside the abatement. I am therefore unable to agree with the decision of Horwill, J., in C. R. P. No. 636 of 1947.

4. The result is that this civil revision petition is dismissed with costs.