

**(2001) 11 AP CK 0102**

**In the Andhra Pradesh High Court**

**Case No : Civil Revision Petition No. 4403 of 2001**

Muktar Ahmed Khan

APPELLANT

Vs

Margadarshi Chit Fund Limited and Others

RESPONDENT

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**Date of Decision : 28-11-2001**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 19A(2) , Order 5 Rule 20, Order 9 Rule 13  
Limitation Act, 1963 — Section 5

**Citation :** (2002) 1 ALD 682 Supp

**Hon'ble Judges :** Y. Somayajulu, J

**Bench :** Single Bench

**Advocate :** Ali Farooq, for the Appellant; P. Raja Rao and A.V. Sesha Sai, for the Respondent

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**Judgement**

Y. Somayajulu, J.—1st respondent filed O.S.No.474 of 1999 against respondents 2 to 4 and the revision petitioner for recovery of certain amounts. Since summons issued to the revision petitioner were not served, on 30-12-1999, the trial Court ordered fresh summons by registered post for service on the revision petitioner and posted the suit to 18-2-2000. Since acknowledgement of service of summons on the revision petitioner was not received, the suit was adjourned to different dates till 27-4-2000 awaiting summons, on which date the 1st respondent filed a petition under Order V Rule 20 C.P.C., in I.A.No.294 of 2000, in which the Court ordered service of notice by publication in "Eenadu" Telugu daily news paper and also notice by registered post and posted the case to 23-6-2000 for appearance of the revision petitioner. Accordingly 1st respondent published notice in the newspaper and also took out notice by registered post. Since notice by publication was effected, though postal acknowledgement was not received, since revision petitioner did not appear, he was set ex parte on 23-6-2000. On 1-8-2000 the Court below recorded the evidence on behalf of the 1st respondent and decreed the suit on the same day because respondents 2 to 4 also remained ex parte.

2. Alleging that after the Bailiff came with a warrant of attachment of his property only, did he come to know about the filing of the suit and the decree passed against him therein, revision petitioner filed two petitions, one under Order IX Rule 13 C.P.C. to set aside the ex parte decree passed against him, and I.A.No.433 of 2001 u/s 5 of the Limitation Act to condone delay of 279 days in filing the petition under Order IX Rule 13 C.P.C. By the order under revision, the trial Court dismissed the I.A.No.443 of 2001. Hence this revision.

3. The contention of the learned counsel for the revision petitioner is that revision petitioner came to know of the filing of the suit and the decree against him only after the Bailiff came with a warrant of attachment and so revision petitioner need not file a petition u/s 5 of the Limitation Act because limitation starts only from the date of knowledge, as per Article 123 of the Limitation Act and as per that Article substituted service under Rule 20 of Order V C.P.C. shall not be deemed to be due service.

4. The contention of the learned counsel for 1st respondent is that since postal acknowledgements of notices sent to the correct address of the revision petitioner were not received for more than 30 days from the date of issue, the Court under Rule 19A of Order V C.P.C. can declare that summons are duly served and since the inordinate delay of 279 days is not properly explained, the Court below rightly dismissed the petition for condonation of delay.

5. The contention of the learned counsel for the 1st respondent that revision petitioner should be deemed to have knowledge of the suit by virtue of the proviso to sub-Rule (2) of Rule 19A of Order V C.P.C., does not have any force because revision petitioner was not set ex parte by the Court below by taking recourse to that provision. Revision petitioner was set ex parte only because he did not appear even though notice to him was published in news paper under Rule 20 of Order V C.P.C. Article 123 of Limitation Act clearly lays down that notice by substituted service under Rule 20 of Order V C.P.C. is not due service. So limitation starts from date of knowledge only but not from the date of decree.

6. Rule 19A of Order V C.P.C. reads as follows:

"R.19A. Simultaneous issue of summons for service by post in addition to personal service.- (1) The court shall, in addition to, and simultaneously with, the issue of summons for service in the manner provided in rules 9 to 19 (both inclusive), also direct the summons to be served by registered post, acknowledgement due, addressed to the defendant, or his agent empowered to accept the service, at the place where the defendant, or his agent, actually and voluntarily resides or carries on business or personally works for gain.

Provided that nothing in this sub-rule require the Court to issue a summons for service by registered post, where, in the circumstances of the case, the Court considers it unnecessary.

(2) When an acknowledgement purporting to be signed by the defendant or his

agent is received by the Court or the postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons, when tendered to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, prepaid and duly sent by registered post, acknowledgement due, the declaration referred to in this sub-rule be made notwithstanding the fact that the acknowledgement having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of the issue of summons."

As stated above the Court below did not take recourse to the above Rule, and did not in fact declare that the revision petitioner was duly served. Moreover, a close and careful reading of the proviso to sub-Rule (2) of Rule 19A of Order V C.P.C. shows that that sub-rule contemplates two types of situations i.e., (i) acknowledgement being lost or mislaid and (ii) acknowledgement not being received for any other reason. The first part i.e., acknowledgement being lost or mislaid can be either in the Court or in the Post Office. If it is lost or mislaid in the Court, there is likelihood of some type of record being available to show whether the envelope was received or refused or returned for some other reasons. In my considered opinion the declaration of due service contemplated by proviso to sub-Rule (2) of Rule 19A of Order V C.P.C. is intended only for the purpose of enabling the Court taking further steps in the Court. It is always open to the defendant to establish that there was no due service, as such "declaration", contemplated by the Sub-Rule is not a conclusive proof of service of notice on the defendant. So defendant can always establish non-service and seek appropriate relief. Therefore sub-rule (2) of Rule 19A of Order V C.P.C. does not shut the door against him from contending that he has no knowledge of the suit as he was not actually served with the summons in the suit.

7. As stated earlier, in this case, the Court set the revision petitioner ex parte only on the ground that he did not appear in response to the notice by paper publication, but not on the basis of the presumption or declaration under proviso to sub-rule (2) of Rule 19A of Order V C.P.C. There is nothing on record to show that the revision petitioner had knowledge of the suit even prior to the date of attachment, as contended by him. It is the contention of the learned counsel for the revision petitioner that revision petitioner does not read Telugu news papers and that, as Travelling Ticket Inspector in the South Central Railway, he would be away from house for many days in the month. The occupation of the revision petitioner is not denied or disputed. Therefore the explanation given by the revision petitioner for the delay can be accepted. So even assuming that the limitation starts from the date of decree, revision petitioner can be said to have satisfactorily established the reasons for the delay.

8. The other contentions raised by the learned counsel for the 1st respondent on

the merits of the petition under Rule 13 of Order 9 C.P.C. need not considered at this stage. The said contention can be raised before the trial Court when it takes up the petition filed by the revision petitioner under Order IX Rule 13 C.P.C. for hearing it on merits.

9. For the above reasons, the C.R.P. is allowed. The trial Court shall take the petition filed by the revision petitioner under Order IX Rule 13 C.P.C. on file and dispose of the same on merits after giving opportunity to the 1st respondent to file his counter. The said petition should be disposed of within four (4) weeks from the date of receipt of a copy of this order. No costs.