

(2015) 01 KAR CK 0107
In the Karnataka High Court
Case No : C.R.P. No. 308/2013

N.G. Subbaraya Setty

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, Order 9 Rule 7

Citation : (2015) 01 KAR CK 0107

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : Ramesh P. Kulkarni, for the Appellant; H.R. Katti, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.V. Chandrashekara, J.—The instant petition is filed challenging the judgment dated 20.07.2013 passed by the 42nd Addl. City Civil and Sessions Judge in Misc. No. 81/2011.

2. Heard the learned counsel for the petitioner regarding admission.

3. Misc. Petition No. 81/2011 filed under Order 9 Rule 13 of CPC by the Canara Bank praying to set-aside the judgment and decree passed in O.S. No. 495/2008 which was pending on the file of 42nd Addl. City Civil and Sessions Judge has been allowed and ex parte judgment passed in the said suit has been set aside and the suit is restored to its original position. It is this order dated 20.07.2013 passed in Misc. Petition No. 81/2011 is called in question on various grounds as setout in the petition.

4. Learned counsel for the petitioner has drawn the attention of this Court to the order dated 29.10.2013 passed by this Court while issuing notice to the respondents on this revision petition. On 29.10.2013, this Court had issued notice to the respondents for the limited purpose of examining as to whether the trial Court could have condoned the delay in filing the application without

imposing any condition. Hence, it is argued that this aspect will have to be considered.

5. Perused the order dated 20.07.2013. It is true that there was a delay of 200 days in filing Misc. Petition under Order 9 Rule 13 of CPC under which a relief has been sought for setting aside ex parte judgment passed in O.S. No. 495/2008.

6. Admittedly, the suit had been filed for the relief of recovery of money by the Canara Bank from the defendants. The total amount sought to be recovered in the said suit was to an extent of Rs. 17,00,000/-. What is argued before this Court by the learned counsel for the petitioner is that the delay could not have been condoned so easily that too without imposing any conditions.

7. In the decision of the Hon''ble Apex Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , the Hon''ble Apex Court has laid down seven broad guidelines regarding the approach to be adopted in condoning delay. It is held that there should be a liberal approach towards condonation of delay and a meritorious case should not be thrown out on the question of technicalities. From reading of all the seven guidelines as laid down in the said decision, it is evident liberal approach is to be adopted while considering a petition under Order 9 Rule 13 of CPC.

8. Apart from this, the Hon''ble Supreme Court in the case of Arjun Singh Vs. Mohindra Kumar and Others, has held that there is no difference between the facts to be established for satisfying the two tests of "good cause" and "sufficient cause" as found in Order 9 Rule 7 of CPC and Order 9 Rule 13 of CPC and both of them depend on the reasonableness of the excuses given. In another decision in the case of Union of India v. Ram Charan (deceased) through his legal representatives reported in Union of India (UOI) Vs. Ram Charan and Others, , the Hon''ble Apex Court has held that liberal approach is essential to which substantial justice has to be delivered while considering the sufficiency of the cause for setting aside ex parte decree under Order 9 Rule 13 of CPC.

9. After going through the order dated 20.07.2013, it is evident that the learned Judge has considered all aspects in detail. The decision reported in Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others, has also been discussed and distinguished vis-?-vis the facts of the case. Taking into consideration that the amount sought to be recovered from the defendants is huge, the learned Judge has exercised his discretion in condoning the delay and accepting the cause shown in the petition filed under Order 9 and Rule 13 of CPC.

10. Therefore, this Court does not find any reason to interfere with the discretion exercised in the present case and there are no merits to admit the petition and the same is liable to be dismissed.

11. Hence, the following:

ORDER

"i) The petition is dismissed.

ii) The ex parte judgment passed in Misc. Petition No. 81/2011 is set-aside and the matter is restored to its original number.

iii) Since the suit is of the year 2011 filed by a Nationalised Bank for recovery of huge amount, the same shall be disposed of at the earliest keeping in mind the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, as the claim is above Rs. 10,00,000/-."