
(2006) 02 AP CK 0108
In the Andhra Pradesh High Court
Case No : CRP No. 2113 of 2003

P. Munirathnam Reddy and Another	Vs	APPELLANT
B.M. Munirathnam Reddy		RESPONDENT

Date of Decision : 22-02-2006

Acts Referred:

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

Citation : (2006) 5 ALD 834

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M. Vidyasagar, for the Appellant; D. Seshadri Naidu, for the Respondent

Judgement

L. Narasimha Reddy, J.—The petitioners challenge the order, dated 6-1-2003, passed by the learned Principal Senior Civil Judge, Timpati, in LA. No. 134 of 1999 in O.S. No. 333 of 1997.

2. The respondent filed the suit against the petitioners, for the relief of recovery of damages and compensation, on the allegation that both the petitioners deposed against him in some other proceedings, and thereby, he sustained loss. The suit was decreed ex parte on 4-2-1998 and thereafter, E.P. No. 34 of 1998 was filed.

3. The petitioners filed an application under Order IX Rule 13 C.P.C. for setting aside the ex parte decree, dated 4-2-1998. Since there was delay of 269 days in filling the said application, the petitioners filed IA. No. 134 of 1999 u/s 5 of the Limitation Act. The petitioners pleaded that soon after they received summons in the suit, they engaged an Advocate and in the meanwhile, the well-wishers of both the parties have advised for mediation. They allege that mediation has taken place, and both the parties were advised not to proceed with the suit, till the matter is settled; and despite the same, the respondent proceeded with the suit and obtained the ex parte decree. The petitioners pleaded that soon after

they received notice in E.P. No. 34 of 1998, they verified the matter and filed application.

4. On an earlier occasion, the trial Court allowed LA. No. 134 of 1999, through orders, dated 1-10-2001, by imposing costs of Rs. 1,000/-. The respondent filed C.R.P. No. 4140 of 1999, against the same, before this Court. The C.R.P. was allowed on 3-10-2001, on the ground that the petitioners did not adduce evidence to substantiate their case. The matter was remanded. After remand, the parties have adduced oral evidence. Through the order under revision, the trial Court dismissed the IA.

5. Sri M Vidya Sugar, the learned Counsel for the petitioners, submits that the petitioners as well as the mediators were examined before the trial Court and though it was clearly established that the mediation has taken place between the parties, the trial Court did not believe the same and dismissed the I.A., by taking hypertechnical view.

6. Sri D. Seshadri Naidu, the learned Counsel for the respondent, on the other hand, submits that several inconsistencies existed in the deposition of the witnesses examined on behalf of the petitioners; and the trial Court recorded a definite finding that the plea taken by the petitioners is not substantiated.

7. The plea taken by the petitioners, in submitting the application under Order IX Rule 13 C.P.C. with a delay of 269 days, was that the dispute between them and the respondent was mediated by several well-wishers, and there existed an understanding that the parties shall not proceed with the suit, till the matter is settled. To substantiate their contention, the petitioners deposed as P.Ws.1 and 2 and examined one Mr. K. Chengalraya Reddy and one Mr. V. Munirathnam Reddy as P.Ws. 3 and 4, who are said to have participated in the mediation. Nothing was elicited from P.Ws.3 and 4 to suggest that they did not undertake mediation. The only ground, on which the trial Court disbelieved their evidence, is that P.W. 3 is the brother-in-law of P.W.2 and the daughter of P.W.4 is given in marriage to P.W.2.

8. It must not be forgotten that in the village background, the well-wishers, or for that matter, most of the villagers, are inter-related with each other. The trial Court was not trying any criminal case, to see whether the witnesses were independent. By the very nature of the things, it is only the acquainted and closely related persons that would act as mediators and not those, who are unconnected, or inimically disposed.

9. It is not as if the suit was pending for years together, on account of non-cooperation of the petitioners herein. Hardly within few months from the date of filing the suit, it came to be decreed ex parte. Further, the relief claimed against the petitioners, is not the one for declaration or injunction, in respect of any immovable property. It is for recovery of damages from the petitioners, on the ground the deposition of the petitioners in other proceedings resulted in loss and hardship to the respondent.

10. Time and again, the Supreme Court as well as this Court emphasized that the focus should be on enabling the parties to invite decision on merits, instead of burdening them, with unilateral and ex parte proceedings. After going through the record, this Court is satisfied that the petitioners have offered proper explanation for the delayed submission of the application under Order IX Rule 13 C.P.C.

11. Hence, the civil revision petition is allowed and the order under revision is set aside. Consequently, IA. No. 134 of 1999 shall stand allowed.

12. In several instances, this Court took the view that the grounds that weigh with the Courts for condonation of delay, in submission of the application under Order IX Rule 13 C.P.C., would be sufficient for setting aside an ex parte decree also. To avoid further complication in the matter, it is directed that the ex parte decree, dated 4-2-1998, in O.S. No. 333 of 1997, shall stand set aside.

13. Since the suit is of the year 1997, the trial Court is directed to proceed with the matter on merits and dispose of the same, by the end of 2006, There shall be no order as to costs.