

(2002) 07 AP CK 0084
In the Andhra Pradesh High Court
Case No : AAO No. 2465 of 2001

Penneru Veera Raghava Rao alias Raghavarao	APPELLANT
Vs	
Penneru Ravi alias Rama Mohan Rao and Others	RESPONDENT

Date of Decision : 23-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 19, Order 41 Rule 9

Citation : (2002) 6 ALD 152 : (2002) 2 AnWR 501

Hon'ble Judges : C.Y. Somayajuluy, J

Bench : Single Bench

Advocate : P. Suresh, for the Appellant; G. Krishna Murthy, for the Respondent

Final Decision : Allowed

Judgement

C.Y. Somayajuluy, J.—When CMP No. 13161 of 2002 is taken up for hearing, at the instance of the Counsel for both sides the appeal itself is heard.

2. This appeal arises out of the order dismissing IA No. 1815 of 1992 in AS No. 79 of 1987 on the file of the Court of First Additional District Judge, Krishna at Machilipatnam, filed under Order 41, Rule 19 read with Section 151 CPC to restore the appeal, which was dismissed for default, to file.

3. The averments, in brief, in the affidavit filed by the appellant in support of the petition in IA No. 1815 of 1992 are that when the appeal was posted for hearing on 4-8-1992, the appellant was held up at Visakhapatnam to attend on his eldest daughter, who was hospitalized, and so he could not approach his Counsel at Machilipatnam to prosecute the appeal, and subsequently he came to know that the appeal was dismissed for default, and so the appeal may be restored to file and heard on merits.

4. The said application was opposed on the ground that there are valid grounds to restore the appeal, which was dismissed for default. The learned Judge, on the ground that the affidavit of the appellant does not disclose as to when he left for Visakhapatnam and did not also produce the medical certificate or any other

document to substantiate his plea taking into consideration the previous conduct of the appellant, dismissed the said application.

5. The contention of Mr. P. Suresh, learned Counsel for the appellant, is that the learned I additional District Judge, Machilipatnam was in error in taking into consideration the previous conduct of the appellant for considering the question as to whether there was sufficient cause for his non-appearance on 4-8-1992 or not. and contended that since the daughter of the appellant but not the appellant that was hospitalized, the appellant could not produce any medical record, and since the suit is for partition and since the Counsel for the appellant in the I Additional District Court passed away, the appellant could not take proper steps for prosecuting the appeal earlier, and so a reasonable opportunity may be given to the appellant for hearing the appeal on merits. The contention of the learned Counsel for the respondents is that the gross negligence and laches on the part of the appellant resulted in the I Additional District Judge passing the order under appeal and contended that since the averment that the appellant was held up at Visakhapatnam in connection with the sickness of his daughter is not supported by any documentary evidence, the Court below rightly dismissed the application, and so there are no grounds to interfere with the order under appeal.

6. There is force in the submission of the learned Counsel for the appellant that the Court below was in error in taking into consideration the previous conduct of the appellant for dismissing the appeal, because as per Rule 19 of Order 41 CPC, the appellant has to establish that he was prevented by a sufficient cause from appearing when the appeal was called on for hearing. So, it would be enough if the appellant establishes a sufficient cause for his non-appearance on the day on which the appeal was dismissed for default and his previous conduct need not and cannot be taken into consideration for disposing of the petition filed under Rule 19 of Order 41 CPC . Therefore the question is whether the appellant is able to established that he was prevented by sufficient cause from appearing before the Court on 4-8-1992.

7. The specific averments of the appellant in para 2 of the affidavit filed in support of IA No. 1815 of 1992 is that he was at Visakhapatnam to attend on his daughter, who was hospitalised and, therefore, he could not attend on the date of hearing of the appeal. The said averment is not traversed by the respondents by way of a counter-affidavit. Tenth respondent filed a verified counter contending that as the appellant was absent and since there was no representation on behalf of the appellant, the appeal was dismissed. The statement of the appellant in his affidavit that he was held up at Visakhapatnam to see his daughter who was hospitalised is not disputed in the said counter. Therefore, it has to be taken that the appellant was at Visakhapatnam on the date on which the appeal was dismissed for default. The appellant, being away at Visakhapatnam to see his daughter, who was hospitalized, is a sufficient ground for his non-appearance on the date when the appeal was dismissed for default. Since the appellant is able to establish that he was prevented by a sufficient

cause from attending the Court on the day on which the appeal was dismissed, and since his previous conduct cannot be taken into consideration, the Court below was in error in dismissing the appeal for default.

8. Hence, this appeal is allowed and AS No. 79 of 1987 stands restored to file. The learned First Additional District Judge, Krishna at Machilipatnam shall dispose of AS No. 79 of 1987 on merits as early as possible, at any rate within two months from the date of receipt of a copy of this order. The parties are directed to appear before the Court of First Additional District Judge, Krishna at Machilipatnam on 5-8-2002 for hearing of the appeal.