
(2001) 08 AP CK 0047
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3938 of 1994

Sri Md. Ismail

APPELLANT

Vs

Sri V. Suryanarahyana Rao and Others

RESPONDENT

Date of Decision : 23-08-2001

Acts Referred:

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

Citation : (2001) 08 AP CK 0047

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Rajeswari, for P. Venugopal, for the Appellant; Vishnu Priya, for Mahipathy Rao, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The revision petitioner is defendant No. 2 in O.S. No. 3956 of 1996 on the file of the I Assistant Judge, City Civil Courts, at Secunderabad. The revision petitioner filed an application in IA. No. 731 of 1988 u/s 5 of the Limitation Act, 1963 (for short "the Act") to condone the delay of 426 days in filing the application to set aside the exparte decree dated 24-6-1987. For the purpose of convenience, the parties will be referred to as plaintiff and defendant No. 2 as arrayed in the suit.

2. The plaintiff had filed the suit against defendant No. 2 for declaration and perpetual injunction and the Court below was pleased to set him exparte for non-appearance and posted the case to 28-1-1987. On 28-1-1987, the Court below was pleased to dismiss the suit for default for non-representation of the plaintiff and his counsel. Consequently, the plaintiff filed an application for restoration of the suit. The said application was allowed on 20-3-1987 and the suit was restored without giving notice to the 2nd defendant and subsequent thereto an exparte decree was passed on 24-6-1987. The restoration of the suit was without notice and hence it was not within the knowledge of the 2nd defendant appears

to be the main contention of the 2nd defendant/revision petitioner.

3. The Court below, while dismissing the application filed by the 2nd defendant/revision petition u/s 5 of the Act to condone the delay of 426 days in filing an application for setting aside the exparte decree dated 24-6-1987, had made the following order:

"Perused the documents. The petition is filed U/Sec. 5 of Limitation to condone delay of 426 days in filing a petition U/O.9 R. 13 for setting aside of the exparte decree dated 24-6-1987. But the petitioner has failed to explain by what reason he could not file the present petition U.O.9 R.13 CPC. The law prescribe the delay of each days is to be explained. But the petitioner could not explain the reason for delay even for one day in his petition in entire. Hence there are no merits in t his petition and petition is dismissed."

4. Ms. Rajeshwari, representing Mr. P. Venugopal, learned Counsel for the revision petitioner had taken me to the material available on record and submitted that no doubt there is inordinate delay of 426 days, but the said delay has occurred in view of the fact that no notice was served on the 2nd defendant relating to the restoration of the suit and that is the reason why the 2nd defendant was kept in darkness. The learned Counsel also had submitted that except passing a cryptic order the Court below had not applied its mind properly while making the order. The learned Counsel had placed reliance on DASINA NEELAMMA vs. DASINA KANAKANNA 1989 (3) ALT 305 and A. Venkatasubbiah Naidu Vs. S. Challappan and Others, .

5. Ms. Vishnu Priya, representing Mr. Mahipathy Rao, learned Counsel for the 1st respondent in the revision petition i.e., the plaintiff had submitted that the delay is inordinate delay and each day 's delay has to be properly explained and if it is not explained, the Court has no power to condone the delay u/s 5 of the Act. The learned Counsel had also contended relying upon both Sections 3 and Section 5 of the Act and the scope and the object of the relevant provisions of the Act, the delay cannot be condoned. The learned Counsel placed reliance on P.K. Ramachandran Vs. State of Kerala and Another, .

6. It is no doubt true that the Apex Court had taken the view that the Courts are expected to be flexible in matters of this nature and pendantic approach has to be deprecated. But, however, the facts and circumstances also are to be looked into while appreciating whether the delay can be condoned or not. It is no doubt true that the Courts are expected to record cogent and proper reasons while making an order either condoning the delay or dismissing an application seeking condonation of delay. It may be that non-issuance of notices at the stage of restoration of the suit may be erroneous, but, however, the affidavit filed in support of the application u/s 5 of the Act should disclose certain reasons for condoning the delay. I have gone through the affidavit filed in support of the petition. Excepting the aspect of mentioning non-issuance of notice at the stage of restoration of the suit which was dismissed for default, absolutely there is no

explanation at all explaining the delay of 426 days. Unfortunately, the delay is inordinate. It is no doubt true that in exercising the discretion in matters of this nature, a liberal approach has to be adopted. In fact in a recent decision in VIDABAI VS. S.B. PATIL 2001 (5) SUP 266, the Apex Court had observed that in exercising discretion u/s 5 of the Act, the Courts are expected to adopt a pragmatic approach, but at the same time a distinction had been drawn between the inordinate delay and the delay of few days only. In the present case, no cause had been specified explaining the delay of 426 days. Even if the Court is inclined to adopt a flexible approach, it may not be able to come to the aid of such a party.

7. In view of the foregoing discussion, I am left with no other option except to hold that no cause, much less sufficient cause, had been explained by the 2nd defendant for condoning the inordinate delay of 426 days.

8. The Civil Revision Petition is devoid of merits and accordingly it is dismissed. No costs.