

(1995) 08 KAR CK 0037

In the Karnataka High Court

Case No : Civil Revision Petition No. 3463 of 1994

Syed Mustapha Kamal Pasha and another

APPELLANT

Vs

Dr. H.A. Ramachandra Gowda and others

RESPONDENT

Date of Decision : 17-08-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 4

Citation : AIR 1996 Kar 91 : (1996) 1 CivCC 666 : (1995) ILR (Kar) 3122 : (1995) 4 KarLJ 508

Hon'ble Judges : M.B. Vishwanath, J

Bench : Single Bench

Advocate : S. Nanjundaswamy, for the Appellant; K.S. Ramdas, for the Respondent

Judgement

1. Heard the learned counsel for the parties.

In this revision petition, the petitioners who are the plaintiffs in the trial Court have challenged the order passed by the III Additional City Civil Judge, Mayo Hall Unit, Bangalore City, on 20-7-1994 in O.S. No. 10625 of 1987 rejecting I. A. No. 5 filed by them under O.9, R. 4 of the Code of Civil Procedure.

2. A few facts which are necessary to be noted are: The plaintiffs filed the suit against the respondents who are the defendants in the suit. When the plaint was presented first, the plaintiffs made only the 1st defendant as party to the suit. Since the plaintiffs did not take steps for issue of summons to the 1st defendant, the suit was dismissed for default on 20-7-1990 as against the 1st defendant. The plaintiffs filed the application I.A. No. 5 under O.9, R. 4 of the CPC on 2-9-1991 praying the Court to set aside the order of dismissal of the suit against the 1st defendant and to permit them to take summons to the 1st defendant by substituted service. The learned City Civil Judge dismissed I.A. No. 5. The order dismissing I.A. No. 5 has been challenged in this revision petition.

3. It may not be out of place to mention that the plaintiffs filed the suit paying a

huge court-fee of Rs.49,240/-. The learned City Civil Judge observed that an alternative remedy is available to the plaintiffs by way of a separate suit. The judicial approach of the learned City Civil Judge leaves much to be desired.

4. No doubt there was inordinate delay on the part of the plaintiffs in filing the application, I.A. No. 5, under O.9, R. 4 of the Code of Civil Procedure. There is no period of limitation prescribed for an application to be filed under O.9, R.4 of the Code of Civil Procedure. The view of the learned City Civil Judge that the delay in filing the application under O.9, R. 4 of the CPC has not been properly explained does not hold water bearing in mind that no period of limitation is prescribed for an application under O.9, R. 4 of the Code of Civil Procedure. The order of the learned City Civil Judge is perverse.

5. Accordingly, this revision petition is allowed and the impugned order dismissing I.A. No. 5 is set aside. The order dismissing the suit against the 1st defendant is set aside and the suit is restored to file. Steps shall be taken for issue of summons to the 1st defendant.

6. Defendants 2 and 3 have come on record subsequently and the complaint is that because of the laches on the part of the plaintiffs they have been harassed. There is substance in the complaint. Therefore, they should be awarded some costs. Hence, the plaintiffs are directed to pay a sum of Rs. 500/- to defendants 2 and 3 as costs.

7. Revision allowed.