
(2005) 08 KAR CK 0002
In the Karnataka High Court
Case No : Review Petition 748 of 2004

Thimmaiah

APPELLANT

Vs

M. Muniswamy and Others

RESPONDENT

Date of Decision : 03-08-2005

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2005) ILR (Kar) 5196 : (2006) 6 KarLJ 515 : (2005) 4 KCCR 2949

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : K. Subba Rao, for the Appellant; C.B. Srinivasan, for R4 (A-F), C.M. Raghunath, for R-5, R. Kumar, HCGP for R-2, R-3 served H.T. Narayan, for R-1, for the Respondent

Final Decision : Allowed

Judgement

K. Ramanna, J.—Heard the Learned Counsel for the petitioner on I.A.I/04 and the Learned advocate for respondents. There is a delay of 638 days in filing this review petition. Perused the affidavit filed in support of the application.

2. According to the petitioner/applicant, she acquired knowledge of the order dated 18.11.02 passed by this Court at the end of July, 2004. Therefore, she has come up with this review petition. According to her, she was not served with notice of the writ petition filed by the 1st respondent. In spite of direction given by this Court dated 20.2.2001 to pay process fee, the 1st respondent has not paid the same. Therefore, this Court had passed an order dated 20.3.2001 holding that respondents-4 and 5 were deemed to have been served and hence, service of notice to Respondents-4 and 5 was treated as sufficient. Apart from this, she states that she is a proper and necessary party to the writ petition. Since, she was not served with the notice, she had no opportunity to defend the case.

3. As against this, the 1st respondent filed a detailed objections contending that

this Court has no jurisdiction to review its own order passed long back i.e., 18.11.2002 in W.P.No. 23958/94 (LR) and the present review petition is not at all maintainable, as the petitioner/ applicant has filed a false affidavit. The review petition is filed on 28.9.04 and there is a delay of one year nine months and the delay has not been properly explained by the petitioner. She herself had filed O.S.No. 5729/95 before the 16th Additional Civil and Sessions Judge, Bangalore against B.D.A. and others, wherein the 1st respondent was arrayed as defendant No. 8 for the relief of permanent injunction. She had filed a written statement stating that the W.P.No. 23958/94 has been filed and was disposed off later by quashing the order of the Land Tribunal order in L.R.F.No. 36/1979-80 and the suit was dismissed against her and defendant Nos. 1 and 9. The petitioner had the knowledge about the disposal of the writ petition in the month of July itself. Therefore, the contention of the petitioner that no notice was served on her is not a ground to entertain the application and condone the delay. Therefore, the respondents pray for dismissal of

4. Heard the arguments of Sri Subba Rao, Learned Senior Counsel appearing for the petitioner and the arguments of the Learned Counsel appearing for the respondents.

5. During the course of arguments, it is contended by the Learned Counsel for the petitioner that there is a delay of 63 8 days in filing this review petition, since no notice was served on the petitioner and Respondent No. 5 in W.P.No. 23958/94. Further, he contends that a specific order is made on 10.1.2001 by directing the Government Advocate to take notice on behalf of Respondents-1 & 2 and steps for Respondents-4 and 5. In spite of that, process fee has not been paid by the petitioner and therefore, this Court had adjourned the case on several occasions to furnish process fee. On 20.2.2001, time was granted to do the needful. This Court on 23.3.01 has passed an order stating that "it was reported by the office that though the notice was sent to R-4 and 5 by RPAD, neither the acknowledgment nor the cover have been received back so far by the office". Under the circumstances, therefore, service of notice to Respondents-4 and 5 is treated as sufficient. Therefore, there is an error apparent on the face of the record. Hence, the present review petition is... maintainable. In support of his contention, the Learned Counsel relied upon the decision *State of Punjab v. Mst. Qaisar Jehan Begum and Anr.* AIR 1963 SC 604 it has been held in para-5 that knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. Therefore, mere knowledge of the disposal of the writ petition is not a ground to hold that there is no prima facie case to condone the delay. But the order must be communicated to the party unless the party receives the said order by applying himself for grant of certified copy within the limited period. At that time, she herself has filed such petition to condone the delay. He also relied on the decision of the Division Bench of this Court *R. Venkataramiah v. T. Narayana Sastry and Ora.* 1969 (2) Mys LJ 204 where the date of pronouncement of the order was not notified to the appellant and he had not

opportunity to be present at the time when the order was pronounced, the period of limitation allowed u/s 28(1) of the Act has to be reckoned from the date on which the appellant obtained a certified copy of the order and not from the date on which the endorsement intimating that the order had been pronounced was served on him.

6. It is further contended that the respondent has wrongly furnished the address of the petitioner even though he was residing in No. 124, "A" Block, Hebbal Farm post, Bangalore-560024. Therefore, the notice if any issued to the respondent, it will not become a valid service. The petitioner has explained the delay in filing this review petition satisfactorily.

7. As against this, the Learned Counsel for the respondents submits that the petitioner had the knowledge about the disposal of the writ petition and there is no irregularity in the impugned order passed by this Court to review the petition. This Court has not jurisdiction to entertain the review petition. Therefore, the review petition is liable to be dismissed.

8. It is seen that the notice was issued to the petitioner on several occasions, but not served. The records indicate that the 1st respondent had furnished wrong address of the petitioner and this Court had issued notice to the petitioner furnished by the 1st respondent. Therefore, this Court by believing the endorsement made by the office held that the service of notice was sufficient which is an error apparent on the face of the records. If no notice was served on the petitioner/respondent, and if she had no knowledge about the order dated 18.11.2002 and later came to know about the impugned order, the application filed u/s 5 of the Limitation Act to condone the delay of 638 days in filing this review petition is to be allowed. Considering the facts and circumstances of the case and the law laid down by the Hon'ble Apex Court and the Division Bench of this Court that the knowledge of the order does not mean a mere knowledge of fact an order has been passed. The knowledge must relate to essential contents of the order. Therefore, mere knowledge of disposal of the case is not a good ground to come to a different conclusion that the petitioner had knowledge of passing the order under review. The record indicates that the limitation counts from the date of receipt of the certified copy of the order dated 31-11 -2002 but not from the date of knowledge. Therefore, it could be said that the delay in filing this review petition has been satisfactorily explained, which is to be allowed.

9. I have carefully examined the materials placed on record. I have also perused the order sheet of W.P.23958/94. The petitioner has obtained the certified copy on 30.7.2004. Hence, the limitation starts from 31.7.2004 to file review petition. Therefore, for the reasons stated in the affidavit filed along with the application, delay is condoned. I.A.I/2004 is allowed.

Accordingly, I.A.I/2004 filed u/s 5 of the Limitation Act is allowed.

Post the matter for final hearing.