
(2013) 09 AP CK 0103

In the Andhra Pradesh High Court

Case No : C.R.P.M.P. No. 1394 of 2013 in Rev. C.M.P. No. 6345 of 2013 in Civil
Revision Petition No. 870 of 2012

Vardhineedi Narasimha Rao

APPELLANT

Vs

Gadiraju Bapiraju

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2013) 09 AP CK 0103

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : T.V.S. Prabhakara Rao, for the Appellant; P.V. Rama Sarma, for the
Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—This application is filed for condonation of delay of 172 days in filing the application for review of order dated 24-4-2012 in C.R.P. No. 870/2012. I have heard Sri T.V.S. Prabhakar Rao, learned Counsel for the applicant/Judgment-debtor and Sri P.V. Rama Sarma, learned Counsel for the respondent/Decree-holder.

2. For convenience, the parties are referred as they are arrayed in the Civil Revision Petition.

3. The facts leading to the filing of this application are briefly stated hereunder:

The petitioner is the Decree-holder in O.S. No. 14/2003 on the file of the learned Senior Civil Judge, Kothapeta, East Godavari District. He has filed E.P. No. 1/2010 seeking execution of the decree. By order dated 30-1-2012, the learned Senior Civil Judge dismissed the E.P. on the ground that the petitioner has deposited the stamps beyond the time stipulated under Rule 85 of Order XXI of the Code of Civil Procedure, 1908 (CPC). The petitioner therefore filed C.R.P. No. 870/2012. By order dated 24-4-2012, this Court allowed the revision petition based on the Judgment in Bathula Lakshmi Rajeswara Rao v. Thotakura Subba

Rao and another C.R.P. No. 1491/2000 on the premise that by an amendment brought out to Rule 85 of Order XXI CPC, the deposit of stamps as required under Rule 94 was taken out of the purview of Rule 85 of Order XXI.

The respondent/Judgment-debtor filed a SLP (SLP) against the said order before the Supreme Court. By order dated 24-9-2012, the Supreme Court, after taking note of the plea of the respondent that no amendment was made to Rule 85 of Order XXI CPC, permitted him to withdraw the SLP and approach this Court by way of a review petition. Accordingly, the respondent filed the present review petition with a delay of 172 days in filing the same.

4. In support of his application for condonation of delay, the respondent/Judgment-debtor has stated that as he has filed the SLP against the order of this Court in C.R.P. No. 870/2012, the delay has occurred.

5. The petitioner/Decree-holder filed a counter affidavit opposing the delay condonation petition. He has averred that the respondent has already availed the right of appeal and therefore the review is not maintainable.

6. At the hearing, Sri P.V. Rama Sarma, learned Counsel for the petitioner/Decree-holder, has strenuously opposed the application mainly on two grounds, namely, (i) that Section 5 of the Limitation Act, 1963 (for short "the Act") is not available to the respondent for condonation of delay as the review petition is an offshoot of an order passed under Order XXI CPC; and (ii) that the respondent/Judgment-debtor having already availed the remedy of appeal, he is not entitled to invoke the remedy of review petition in view of the provisions of Order XLVII Rule 1(a) CPC. In support of his submission that the remedy u/s 5 of the Act is not available to the respondent/Judgment-debtor in the facts and circumstances, the learned Counsel placed reliance on the Judgment of this Court in N.V. Chowdhary v. State of A.P. 1997 (6) ALD 128.

Section 5 of the Act reads as under:

Extension of prescribed period in certain cases:

Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation: The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

The plain language of the said provision would make it clear that it would apply to an appeal or any application other than an application under any of the provisions of Order XXI CPC. While dealing with this provision, a learned single Judge of this Court in N.V. Chowdhary (supra) held that the words "application

under any of the provisions of Order XXI of the CPC 1908" shall be construed as taking within their fold any proceedings which are offshoot of applications filed before the trial Court under Order XXI CPC.

7. The provisions of the Act bar the remedy to an aggrieved party if the proceedings are not instituted within the limitation prescribed by it. Therefore, such a provision requires to be construed strictly. The golden rule of statutory interpretation is that when the words of a statute are plain and unambiguous, effect must be given to them. (See: *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, . Section 5 of the Act exempts only applications under any of the provisions of Order XXI CPC and not any proceedings arising from the orders passed on such applications, such as revisions and review petitions. If it were to be the intendment of the Parliament to exempt all proceedings arising out of the applications filed under Order XXI CPC from the application of Section 5 of the Act, it would have not been difficult for it to refer to "all the proceedings arising out of orders passed in the applications also". Indeed, this Court has been entertaining applications filed for condonation of delay day-in and day-out in Civil Revision Petitions arising out of orders passed in applications filed under Order XXI CPC. The learned Counsel for the petitioner has fairly submitted that except the Judgment in *N.V. Chowdhary* (supra), he is unable to lay his hands on any other Judgment of this Court or any other High Court or the Supreme Court taking the view similar to that taken by this Court in *N.V. Chowdhary* (supra).

8. Ordinarily, this Court would have referred this issue to a Division Bench. But, as this Court is of the opinion that the Judgment in *N.V. Chowdhary* (supra) being contrary to the plain language of Section 5 of the Act, and in the absence of any other Judgment supporting the said view, I do not find it necessary to refer the matter to a Division Bench.

9. On a careful consideration of the provisions of Section 5 of the Act and the reasoning given by the learned Judge in *N.V. Chowdhary* (supra), I respectfully differ with the said view. I therefore reject the submission of the learned Counsel for the petitioner that Section 5 of the Act does not apply to the revision/review petitions filed in cases arising out of applications filed under Order XXI CPC.

10. With respect to the second submission of the learned Counsel for the petitioner, under Order XLVII Rule 1(a) CPC, an application for review is maintainable if no appeal has been preferred. In the instant case, the respondent has only filed an application for leave to file appeal before the Supreme Court and the said petition was dismissed as withdrawn without granting leave to appeal. Indeed, the Supreme Court has permitted the respondent to file a review petition while permitting withdrawal of the SLP filed by him. The filing of an SLP does not constitute filing of an appeal unless and until leave is granted for filing appeal and the appeal was entertained by the Supreme Court. Authorities are not wanting on this aspect (See: *Kunhayammed and Others Vs. State of Kerala and Another*, Therefore, this objection of the learned Counsel for the petitioner shall

also fail and the same is accordingly rejected.

11. Having regard to the fact that the respondent/Judgment-debtor had to approach the Supreme Court by filing the SLP and later filed the review petition after withdrawal of the SLP, I am convinced that the delay of 172 days occurred in filing of the review petition is not on account of negligence on the part of the respondent, but due to the bonafide reasons. Therefore, the delay in filing the review petition is condoned. C.R.P.M.P. No. 1394/2013 is accordingly allowed.