

(2003) 02 KAR CK 0005

In the Karnataka High Court

Case No : Civil Petition No. 1743 of 2002 in Writ Petition No. 27016 of 1996

Vasu Shetty and Others

APPELLANT

Vs

Chellu Hengsu and Others

RESPONDENT

Date of Decision : 25-02-2003

Acts Referred:

Citation : (2003) 4 KarLJ 438 : (2003) 2 KCCR 118 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Sampath Anand Shetty, for the Appellant; K. Krishna Bhat, for Respondents-1 and 2 and M.E. Prabhu, Government Advocate for Respondents-3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The learned Government Advocate accepts notice for respondents 3 and 4.

2. I.A. No. 1 of 2002 is filed for condonation of delay of 1171 days in filing the civil petition.

3. Heard the learned Counsel appearing for the petitioners and the learned Counsel appearing for respondents 1 and 2 for a considerable length of time.

4. The submission of the learned Counsel appearing for the petitioners is that from the date of knowledge, there is no delay in filing the petition. Further, the second petitioner Sri Shekar Shetty has filed in affidavit on behalf of himself and other petitioners, dated 21-11-2002. In para 5 of the said affidavit, the second petitioner has stated thus:

"I submit that we were not at all aware of the pendency of the above petition at any point of time earlier. I submit that my mother was not represented by any Advocate and as such we could not learn about the said petition having been dismissed till the last week of September 2002".

In para 5 of the said affidavit the second petitioner has stated that they were not at all aware of the pendency of the writ petition at any point of time earlier. Further, he has stated that the mother of the petitioner was not represented by any Advocate and as such they could not learn about the said petition having been dismissed till the last week of September 2002. To substantiate his contention for condonation of delay, he placed reliance on a judgment of the Supreme Court in the case of Ramnath Sao alias Ram Nath Sahu and Ors. v. Gobardhan Sao and Ors. ILR 2003 Kar. 514 and stated that the principles of law laid down in the said judgment is directly applicable to the facts and circumstances of the case. Therefore, he submitted that the ratio applied in the said judgment should be made applicable to the present case for condoning the delay of 1171 days in filing the petition. Further, he stated that the delay is due to bona fide reasons and not intentional or deliberate. If the delay in filing the petition is not condoned, the petitioners will be put to great hardship and in repairable loss which cannot be compensated. Further, he stated that the petitioners have got good case on merits and will succeed in the matter. Hence, the objection raised by the contesting respondents 1 and 2 should not be accepted and the application for condonation of delay should not be rejected on a hypertechnical ground. Therefore, he prayed that the delay of 1171 days in filing the petition may be condoned.

5. Per contra, the learned Counsel appearing for the respondents 1 and 2 have filed a detailed statement of objections to I.A. No. 1 for condonation of delay of 1171 days in filing the civil petition. He has taken me through the detailed counter-affidavit filed by the second respondent on behalf of himself and the first respondent in which it is narrated and stated in an elaborate manner in paras 4, 5 and 6 which reads as follows:

"4. Accordingly, Court notice dated 19-2-1999 showing the W.P. No. 27016 of 1996 had been sent by this Hon'ble Court to the Court of the Principal Civil Judge (Junior Division), Karkala, to be personally served on her. The process server of that Court came to my house on 8-3-1999 and asked me to take him to the house of the petitioner to serve the said notice on her. I informed him about the death of the petitioner and took him to her house and the present second petitioner Shekar Shetty who was present there, was informed of the contents of the notice issued by this Hon'ble Court and he stated that his mother had died on 10-2-1999 and gave signed statement to that effect on the back of the notice. Thus, it is clear that the present second petitioner and the petitioners had come to know of the pendency of W.P. No. 27016 of 1996 as early as on 8-3-1999.

5. Further, even on their own statements and showing, the present petitioners were aware of the filing of C.P. No. 10420 of 1991, by their mother and its long pendency before this Hon'ble Court and Counsel having been engaged in the same. During the pendency of this civil petition, a memo dated 16-3-2001 had been filed by the Counsel for respondents 1 and 2 therein, after serving copy of the same to the Counsel for the petitioner and in that memo it had been clearly

stated that in view of the fact that similar C.P. No. 1733 of 1991 -- W.P. No. 27016 of 1996 (KLRA) filed by the petitioner in respect of the same L.R.A. No. 132 of 1989 has been dismissed on 4-8-1999, that C.P. No. 10420 of 1991 does not survive and be dismissed. That Memo came up for orders before Court on 16-4-2001 and at the request of the petitioner's Counsel it was adjourned to after vacation. Thereafter, the civil petition was treated as W.P. No. 40018 of 2001 and came up before Court on 23-1-2002 on which date notice to respondents was ordered. The aforesaid memo came up before Court on 20-3-2002 for orders and it was ordered to be listed on 3-4-2002 and it came up on 4-4-2002 on which date it was adjourned by two weeks at the request of the petitioner's Counsel. Finally, it came up before Court on 23-8-2002 on which date the writ petition was dismissed in view of the said memo. Thus, the dismissal of W.P. No. 27016 of 1996 had been made known in March 2001 and repeatedly thereafter on 16-4-2001, 20-3-2002, 4-4-2002 and 23-8-2002.

6. Further, in the month of October 2000, I had cut a Bogie tree from the land in question and in that connection, the present second petitioner-Shekara Shetty had complained to the police and Forest Authorities, who summoned me to their office and when I went there, I was questioned by them in the presence of said Shekara Shetty and I had told about the dismissal of W.P. No. 27016 of 1996 filed by his mother and I had shown them copy of the order dated 4-8-1999 made in that writ petition and on their say I had even given a Xerox copy of the said order to said Shekara Shetty".

A reading of the counter-affidavit filed by the second respondent clearly establishes the fact that the second petitioner was fully aware of the pendency of the writ petition before this Court. He has suppressed the vital materials before this Court. Further, to substantiate his submission, he has also taken me through the original records available on the file wherein the notice sent by the Registry dated 19-2-1999/26-2-1999 addressed to the mother of the second petitioner was served on the second petitioner as the second petitioner had stated that his mother died on 10-2-1999. After service of notice to the second petitioner, the process server attached to the Court of Principal Civil Judge (Junior Division), Karkala, has recorded the statement made by the second petitioner. Therefore, the learned Counsel appearing for the respondents 1 and 2 stated that the second petitioner is aware of the pendency of the writ petition before this Court in W.P. No. 27016 of 1996. This vital part of the material documents available on the original records is fully suppressed by the second petitioner deliberately and has sworn to a false affidavit. Hence, he stated that the second petitioner has not made out any good grounds to condone the delay and prayed that the said application filed by the second petitioner is misconceived and is liable to be dismissed.

6. The learned Government Advocate appearing for respondents 3 and 4, inter alia, submitted that the second petitioner having full knowledge of the pendency of the writ petition before this Court has sworn a false affidavit for condoning the

delay contrary to the materials on record.

7. After hearing both the learned Counsels appearing for the respective parties for a considerable length of time, I have re-evaluated the entire materials available on record and after careful scrutiny of the records, it is seen that the vital documents as pointed out by the learned Counsel appearing for the first and second respondents is suppressed intentionally. Further, it is seen that the notice sent to the mother of the petitioners dated 26-2-1999 has been served on the second petitioner. The second petitioner was aware of the pendency of the writ petition in W.P. No. 27016 of 1996 before this Court. This fact is intentionally and deliberately suppressed in the application filed by him for condonation of delay of 1171 days and the only explanation sought to be given by him is that they were not at all aware of the pendency of the writ petition before this Court as their mother was not represented by any Advocate. The said reasoning given by the second petitioner on behalf of himself and other petitioners cannot be accepted as bona fide. He has intentionally and deliberately suppressed the material facts available on record. Moreover this is the second round of litigation before this Court. On an earlier occasion the writ petition in W.P. No. 27016 of 1996 was dismissed on 4-8-1999. Then, thereafter one more W.P. No. 40018 of 2001 filed by the petitioner has been dismissed as abated on 23-8-2002 after hearing the learned Counsels appearing for the petitioner and the learned Counsel appearing for the respondents. In the said writ petition also, the same Advocate who represents the petitioners in the present case had appeared but in the said writ petition they do not state that they were not aware of the pendency of the writ petition in W.P. No. 27016 of 1996. The conduct of the petitioners is not fair to the Court. This is nothing but an abuse of process of law. The petitioners have not come with clean hands. Such litigants are not entitled to seek relief before this Court. If a party wants relief, it is his duty to come with clean hands and explain the truth as to what has transpired in the case. Therefore, in my considered view the petitioners have not given cogent reasons and explained the delay satisfactorily. No credibility can be given for the application filed for condonation of delay. Therefore, I.A. No. 1 is rejected.

8. The learned Counsel appearing for the petitioners has placed reliance on a judgment of the Supreme Court as stated supra. There is no dispute regarding the well-settled law laid down by the Apex Court. But the law laid down in the above case is not applicable to the facts and circumstances of this case because in that case, the party was not aware of the pendency of the proceedings and therefore the Supreme Court has accepted the reasons and condoned the delay. The said ratio laid down cannot be made applicable to the facts and circumstances of the instant case as the petitioners have intentionally and deliberately suppressed the material fact by stating that they were not aware of the pendency of the writ petition in W.P. No. 27016 of 1996 before this Court. There is no substance in the submission made by the learned Counsel appearing for the petitioners. Therefore, having regard to the facts and circumstances of the case as stated above and taking into consideration the materials available on

record, I do not find any justification for condoning the delay of 1171 days in filing the civil petition. Therefore, I.A. No. 1 filed by the petitioner is liable to be rejected and is accordingly rejected. Consequently, civil petition filed by the petitioner is liable to be dismissed and is accordingly dismissed.