

(1975) 12 AP CK 0009

In the Andhra Pradesh High Court

Case No : Letter Patent Appeal No. 168 of 1974

V.T.V. Rangacharyulu and Another

APPELLANT

Vs

Sriram Gnaneswar

RESPONDENT

Date of Decision : 01-12-1975

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : AIR 1976 AP 301

Hon'ble Judges : Sambasiva Rao, Acting C.J.;Muktadar, J

Bench : Division Bench

Advocate : A.G. and A. Lakshmanachar, for the Appellant;

Judgement

1. Aggrieved by the judgment and decree dated 4-10-1967 in O.S. 78/64 on the file of the Fourth Additional Judge, City Civil Court, Hyderabad, the plaintiff preferred an appeal before a Single Judge of this Court. During the pendency of the appeal, the defendant, Ramanuja Swamy died on 25-9-68. On 14-11-1968 C.M.P. No. 20322/68 was filed to bring his wife, Tayaramma on record as his sole legal representative. That C.M.P. came up for orders before the Court with regard to non-payment of batta, and on 1-10-1969 it was ordered that if batta was not paid within one week, the C.M.P. would stand dismissed. The order not being complied with, the same C.M.P. stood dismissed on 8-10-1969. However, it was again restored on 23-1-1970. Once again, the same C.M.P. was dismissed by Sriramulu, J., on 11-8-1970 as the order of the Court was not complied with even by that date. While dismissing the C.M.P. the learned Judge also dismissed the appeal. On 1-1-1970 plaintiff in the suit who was the appellant before the single Judge filed a petition (C.M.P. No. 8678/70) to implead Rangachary and Chandraiaah who are appellants to this appeal as additional parties under Order 1, Rule 10, C.P.C. It came up for orders before the Court. A D.V. Reddy, J., dismissed this petition for default on 2-3-1971. Then another C.M.P. bearing No. 3101/71 was filed on 18-4-1971 to restore C.M.P. No. 8678/75. In this petition Tayaramma was made a party but not Rangachary and Chandraiah, another

C.M.P. bearing No. 4488/71 was filed by the respondent to condone the delay in filing C.M.P. no. 2101 of 1971. Both these C.M.Ps. bearing 2101/71 and 4488/71 were again dismissed for default on 17-9-1971. The respondent then filed C.M.P. No. 4540/71 to restore C.M.P. No. 2101/71 which was a C.M.P. to restore C.M.P.No. 4577/71 which was a petition to condone the delay in filing C.M.P.No. 2101/71. During the pendency of these two C.M.Ps. Tayaramma who was made a party to C.M.P. No. 2101/71 died on 23-3-1972. The respondent was directed on 24-3-1972 to take the necessary steps, but no steps were taken within the time, and consequently, C.M.P. No. 4540/71 and 4577/71 got abated.

2. Once again the respondent filed C.M.P. No. 6734/72 on 12-7-1972 for setting aside the abatement of C.M.P. No. 4577/71 which was a petition filed to restore C.M.P. No. 4488/71. The respondent also filed C.M.P. No. 6735/72 to implead the legal representatives of Tayaramma in C.M.P. No. 4577/71. Another C.M.P. bearing No. 6737/72 was filed by the respondent to set aside the abatement in C.M.P. No. 4540/71 which was a petition to restore C.M.P. No. 2101/71. A fourth C.M.P. bearing No. 6738/72 was also filed for impleading the legal representatives of Tayaramma in C.M.P. No. 4540/71 which was a petition to restore C.M.P. No. 2101/71. All these four C.M.Ps. came up for hearing before A.D.V. Reddy, J on 29-8-72. The learned Judge passed the following order :

"There are all petitions filed after the disposal of the main appeal C.C.C.A. No. 109 of 1968 which was dismissed on 11-8-1970, they are therefore not even maintainable. It is stated by Mr. Upendralal Waghay appearing for the appellants that the appeal was disposed of without the knowledge of his clients and that he is going to file a petition to have the appeal restored. If the appeal is restored it is then open to him to take advantage of whatever legal consequences that follow on such restoration with regard to the petitions. These petitions are therefore dismissed with costs. One set."

3. It is to be noted that until 22-8-1972 there was no petition on behalf of the respondent to set aside the abatement and dismissal not only on C.M.P. No. 20322/68 but also of the main appeal C.C.C.A. No. 20322/68 and C.C.C.A. No. 109/68 were dismissed on 11-8-1970 the respondent filed C.M.P. No. 1948/73 to condone the delay of 679 days on 18-10-1972 in filing the C.M.P. to set aside the abatement of the appeal. The respondent also filed C.M.P. (S.R.) No. 71749/72 on 21-10-1972 to condone the delay in filing the petition to set aside the abatement. The respondent also filed C.M.P. (S.R.) No. 80915/73 to condone the delay in filing the restoration petition dismissed on 11-8-1970. This C.M.P. was registered as C.M.P. No. 8119/74 on 18-9-1974. The respondent further filed C.M.P. (S.R.) No. 7416/73 under order 22, Rule 102 and Section 151, C.P.C. on 7-2-1973 to add Rangachary and Chandraiah who are the applicants before us as the legal representatives of Tayaramma on the ground that they are intermediaries. A further petition bearing C.M.P. (S.R.) No. 7417 of 1973 was also filed on 7-2-1973 to condone the delay in filing the petition to bring the legal representatives on record. C.M.P. No. (S.R.) 7417/73 and C.M.P. (S.R.) No.

7416/73 were endorsed as not necessary on 31-3-1973. The respondent also filed C.M.P. (S.R.) No. 84112/73 on 13-12-1973 to set aside the abatement caused by the death of Tayaramma in the affidavit filed in support of C.M.P. No. 1948/73 dated 21-10-1972 which was a petition to condone the delay of 679 days, the respondent herein alleged :

"The petitioner's counsel or the petitioner did not know of the dismissal of the appeal till some other petitions came up for hearing before the Hon'ble Mr. Justice A.D.V. Reddy on the second of August, 1972. After coming to know about the order of the dismissal and ascertaining the necessary facts this application is being filed."

4. This allegation of the respondent in his affidavit is in order to show that he had no knowledge of the dismissal of C.M.P. No. 20322/68 and consequently, the abatement and dismissal of the main appeal until 22-8-1972. This affidavit was filed on 21-10-1972. The affidavit is completely silent with regard to the explanation concerning the day-to-day delay from 22-8-1972 until filing of this affidavit. The only ground stated in the affidavit is :

"My adoptive father is suffering from cancer and has been advised to go to Bombay. I am in Bombay since more than three weeks along with my father this application could not be filed earlier because of this."

5. From this, it is evident that the respondent has not only explained the delay of three weeks prior to the filing of the affidavit but even according to the affidavit, he had knowledge of the dismissal of C.M.P. No. 20322/68, and consequently, the abatement and dismissal of the main appeal on 22-8-1972. Nothing is forthcoming in this affidavit explaining as to why the respondent herein was not able to file C.M.P. No. 1948/73 from 22-8-1972 upto three weeks prior to the filing of the petition bearing C.M.P. No. 1948/73. Sriramulu, J., on the basis of this affidavit considered that the delay ought to be condoned, and hence he allowed this petition to condone the delay of 678 days. Aggrieved by the order dated 13-9-1974 of Sriramulu, J., in C.M.P. No. 1948/73, the respondent herein has preferred this appeal.

8. Mr. Waghray the learned Advocate for the respondent has raised a preliminary point with regard to the maintainability of this appeal. According to him, the order of a single Judge of this court in condoning the delay is set aside abatement of the appeal is not a judgment within the meaning of Cl. 15 of the Letters Patent and therefore this appeal is not maintainable. In support of his contention he cites Chando Devi v. Delhi Municipality, AIR 1961 Punj 424. What Mr. Waghray contends is that the order of Sriramulu J., did not determine the rights or liabilities of the parties in the suit, and, therefore, it is not a judgment within the meaning of Cl. 15 of the Letters Patent. On the other hand, the learned Advocate General contends that the submission of Mr. Waghray is in accordance with the narrow interpretation placed by some courts in India; and that has not been accepted by the Madras High Court nor the Supreme Court.

According to the learned Advocate-General it is now settled that the term "judgment" appearing in Cl. 15 of the Letters Patent cannot be confined to the test whether it determines the rights or liabilities of the parties in the suit but the term "judgment" has been given an extended meaning to include the determination of a valuable right in the party to the suit or proceeding. In support of the contention, he has cited *Kyroon Bee v. Administrator-General of Madras*, (1915) 2 Mad LW 948 = (AIR 1916 Mad 869). *L.C.T.L.P.L. Palaniappa Chettiar and Others Vs. M.R. Krishnamurthy Chetty and Others*, and *Shri Radhey Shyam Vs. Shyam Behari Singh*, .

7. We do not consider it necessary to enter into the historical aspect of the various interpretations given by the various courts in this country with regard to the interpretation of the expression "judgment" contained in Cl. 15 of the Letters Patent. Suffice it to say that on the one extreme is the view as propounded in *Dayabhai Jiwandass v. Murugappa Chettiar*, AIR 1935 Rang 267 (FB) wherein it was held that the word "judgment" in the Letters Patent "means and is a decree in a suit by which the rights of the parties at issue in the suit are determined" and at the other extreme is the view propounded by Bittleton J., in *Desouza v. Coles* (1866) 3 Mad HCR 384 herein the learned Judge observed that the word "judgment" in Cl. 15 of the Letters Patent must be held to have amore general meaning of any decision or determination affecting the rights or the interest of any suitor or the applicant. In between this "broad stream", there are several judgments of the Madras High Court wherein a more extended view that the one adopted in the Rangoon case has been laid down and which are binding on us. The *Tuljaram Row*'s case which is a decision of a Full Bench of the Madras High Court, Sir Arnold White, C.J. observed :

"The test seems to me to be not what is the form of the adjudication but what is its effect in the suit or proceeding in which it is made. If its effect, whatever its form may be, and whatever may be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending or concerned, or if its effect, if it is not complied with, is to put an end in the suit or proceeding, I think the adjudication is a judgment within the meaning of the clause. An adjudication on an application which is nothing more than a step towards obtaining a final adjudication in the suit is not, in my opinion, a judgment within the meaning of the Letters Patent."

8. Following *Tuljaram Row*'s case a Bench of the Madras High Court in *Kyroon Bee*'s case held that an order passed by a single Judge of the High Court sitting on the Original Side, setting aside the abatement of the suit is a judgment within the meaning of Cl. 15 of the Letters Patent and is appealable in spite of the fact that it was "an order on an independent proceeding which is ancillary to the suit". However, in *Appaji Reddiar Vs. Thailammal*, another Bench of the Madras High Court held that an order of the Single Judge directing the respondent to appeal to be brought on records as the legal representatives of the deceased appellant was not an appealable order because it has the effect of allowing

litigation which was proceeding to further proceed to a final adjudication. Beasley, C.J. distinguished Kyroon Bee's case by observing that in that case the suit had already abated, and the question was whether an order setting aside abatement was an order which was appealable or not. The learned Chief Justice further observed :

"The reason for deciding that the order was appealable was because by reason of the abatement of the appeal respondent had acquired a valuable right and that the order setting aside the abatement had the effect of depriving the respondent of that valuable right.

9. Lastly, another Full Bench of the Madras High Court in Palaniappa's case further extended the view with regard to the word "judgment" appearing in Cl. 15 of the Letters Patent to include the determination of a valuable right and a correlative liability between the parties to the enquiry under Order 33, C.P.. Relying upon *Asrumati Devi v. Rupendra Deb*, AIR 1953 SC 18, four tests were formulated to decide whether an adjudication of a Single Judge is a "judgment" under Cl 15 of the Letters Patent. They were : (1) Whether the order or judgment of the Single Judge terminates the suit or proceedings? (2) Whether it affects the merits of the controversy between the parties in the suit itself? (3) Whether it determines some right or liability as between the two parties? (4) Whether, apart from the actual words in the lis or proceeding, a "conceivable order" or an order to the contrary effect would have disposed of the suit and would come within the definition of "judgment". Anantanarayanan, C.J. observed :

"As i have earlier stressed, just as a right to sue in forms pauperis is very valuable right conferred upon a litigant, who has a lis but no means to pay the court-fee, the liability to be sued in the Courts of the land, by a litigant who claims that he must be permitted to do so without paying the court-fee, is a very appreciable liability or obligation. It is for this reason that notice is enjoined open the defendant who is then permitted to show cause against the grant of leave, upon any of the grounds set forth in Order XXXIII, Rule 5, C.P..

Such a right is, indisputably, a very valuable right in that proceeding and it is in my view, a perfectly legitimate argument for a defendant, that he will not be sued in the Courts of the land, by a plaintiff who may take advantage of the provisions in forma pauperis to bring forward an unconscionable, grossly exaggerated or frivolous claim of swollen magnitude, without himself (defendant) being fully heard why the plaintiff should not be granted this indulgence. If the decision is against the defendant a valuable right of the defendant is clearly affected. Further, and this is very important, several of the grounds upon which the defendant can contest the claim, such as, the possession of means by the plaintiff at that time, the ground of a prior fraudulent conveyance, or the ground of an agreement in champerty, will no longer be available to the suit and appeal; they are irretrievably decided against him by the order of the learned single Judge."

10. In Asrumati Devi's case, in view of the contention involved therein, the Supreme Court did not consider it necessary to formulate a definition of the word "judgment" as appearing in Cl. 15 of the Letters Patent. It however, touched upon the various views propounded by the Rangoon, Calcutta, Madras High Courts without commenting as to the propriety or otherwise of the said rulings.

11. In Radhey Shyam's case, the Supreme Court held that an order in a proceeding under Order 21, Rule 90, C.P.C. was a judgment inasmuch as such a proceeding raised a controversy between the parties therein affecting their valuable rights and the order allowing the application certainly deprives the purchaser of rights accrued to him as a result of the auction sale. From the above rulings, some of which are binding on us and some are of great persuasive authority, it is manifest that where a valuable right and a correlative liability are determined in an adjudication by a single Judge of the High Court, "On an independent proceeding which is ancillary to the suit," such an adjudication would be a "judgment" within the meaning of Cl. 15 of the Letters Patent. Applying the principle to the facts of the case on hand, it can safely be held that the adjudication of Sriramulu, J, in condoning the delay in filing the application to set aside the abatement certainly determines the valuable right of the respondent in the first appeal. Hence, we hold that the order of Sriramulu, J, against which this appeal arises is a judgment within the meaning of cl. 15 of the Letters Patent and therefore, this appeal is maintainable. The contention of Mr. Waghray that an adjudication of a single Judge in setting aside the abatement could be a judgment but not an adjudication condoning the delays in filing an application to set aside abatement cannot be countenanced for the reason that just as there is a valuable right in a party to have the application to set aside the abatement dismissed so also, there is a valuable right in the party to see that the delay in filing the application to set aside abatement should not be condoned. When an adjudication is made on such a right, we fail to appreciate why such an adjudication should not be termed as "judgment" within the meaning of Cl. 15 of the Letters Patent. With respect, we are not in agreement with the ruling in Chando Devi's case relied upon by Mr. Waghray as the principle laid down in that ruling adheres to the narrow view as propounded by the Rangoon High Court, in Dayabhai Jawandas's case.

12. In so far as the merits of the appeal are concerned, the learned Advocate-General contends that C.M.P. No. 20322/68 which a petition to bring the wife of the sole respondent, Ramanuja Sway on record as his legal representative was dismissed on 11-8-1970 and on the dismissal of the C.M.P. the main appeal also had abated and dismissed on that day. From then onwards, the respondent herein instead of filing any petition to restore C.M.P. No. 20322/68 which was dismissed and also to restore the main appeal which was dismissed as abated filed C.M.P. No. 8678/70 to add the appellants herein as additional parties to the appeal, and when C.M.P. No. 8678/70 was dismissed for default on 2-3-1971, all the petitions stated above were filed with regard to the ultimate restoration of C.M.P. No. 8678/70 and it was for the first time on 21-10-1972 that C.M.P. No.

1948/73 was filed for condoning the delay of 679 days in filing the petition to restore C.M.P. No. 20322/68. In the affidavit filed in support of C.M.P. No. 1948/73 the respondent gives 22-8-1972 as the date of knowledge but the affidavit dated 18-10-1972 does not at all explain the day-to-day delay from 22-8-1972 onwards. On the other hand, the affidavit only discloses or explains the delay only for three weeks immediately prior to the filing of the C.M.P. No. 1948/73 to the effect that the respondent herein was in Bombay attending on his father's illness three weeks before the filing of the affidavit. In these circumstances the learned Advocate-General submits that the learned Judge was incorrect in condoning the delay in filing C.M.P. No. 1948/73. We are of the opinion that the contention advanced by the learned Advocate-General has to be acceded to. We have perused the affidavit filed in support of C.M.P. No. 1948/73 and find that the petitioner had miserably failed to explain the delay from 22-8-1972 until three weeks immediately prior to filing of C.M.P. No. 1948/73.

13. In these circumstances, we have no other alternative but to allow this appeal and set aside the order of Sriramulu, J, condoning the delay of 679 days. Finally we hold that the respondent had not explained the day-to-day delay and, therefore, C.M.P. No. 1948 of 1973 cannot be allowed, and it is accordingly dismissed. Hence the appeal is allowed with costs.

14. Appeal allowed.