



2023:APHC:20830

HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE TWENTY SEVENTH DAY OF JUNE
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI
CIVIL REVISION PETITION NO: 767 OF 2016

Between:

1. P ANJANEYULU @ ANJANEYA REDDY, PRAKASAM DIST S/o
Thriupathaiah,
Aged about 41 years, Occ: Agriculture,
R/o Putlurivaripalli Village,
Kondakanamitla Mandal,
Prakasam District.

...PETITIONER(S)

AND:

1. SURAVARAPU PITCHI REDDY, PRAKASAM DIST S/o Mala Kondaiah,
Aged 72 years, occ: Business,
R/o Viswanadhapuram, Podili Village and Mandal,
Prakasam District.

...RESPONDENTS

Counsel for the Petitioner(s): DHEERA KANISHKA

Counsel for the Respondents: VENKATESWARLU GADA

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CIVIL REVISION PETITION NO.767 of 2016

Between:

Putluri Anjaneyulu @ Anjaneya Reddy

... Petitioner/Defendant

Versus

Suravarapu Pitchi Reddy

...Respondent/Plaintiff

* * * * *

DATE OF ORDER PRONOUNCED : 27.06.2023

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

1. Whether Reporters of Local Newspapers
may be allowed to see the Order? Yes/No
2. Whether the copy of Order may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the
fair copy of the Order? Yes/No

JUSTICE B.V.L.N.CHAKRAVARTHI



*** HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ CIVIL REVISION PETITION NO.767 of 2016

% 27.06.2023

Between:

Putluri Anjaneyulu @ Anjaneya Reddy

... Petitioner/Defendant

Versus

Suravarapu Pitchi Reddy

...Respondent/Plaintiff

**! Counsel for the Revision
petitioner**

: Sri Dheera Kanishka

^ Counsel for the Respondent

: Sri Gada Venkateswarlu

< Gist:

> Head Note:

? Cases referred:

1. **Sugandhi (Died) by LRs and others vs. P.Rajkumar** reported in **(2020) 10 Supreme Court Cases 706.**
2. **Basawaraj and another vs. Special Land Acquisition Officer** reported in **2013 (6) ALT (SC) 43 (D.B.).**
3. **K.Chandra Sekhara Rao (Died) per LRs and others vs. District Collector, Ranga Reddy District, Hyderabad and others** reported in **2019 (1) ALT 377.**



4. **M.S.Naudine Pharma, represented by its Partner and another vs. M/s. Med Manor Organics Private Limited, represented by its Director** reported in **2019 (2) ALT 270.**
5. **Pawan Kumar Jain vs. G.K.Jain** reported in **2013 SCC OnLine Del 3419.**
6. **Ravi Sharma vs. Union of India** reported in **2019 SCC OnLine All 2822.**

This Court made the following:



THE HONOURABLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

CIVIL REVISION PETITION NO.767 OF 2016

ORDER:

Heard Sri Dheera Kanishka, learned counsel representing for the revision-petitioner and Sri Gada Venkateswarlu, learned counsel representing for the respondent.

2. This revision-petition is directed against the Order, dated 22.12.2015 in I.A.No.404 of 2015 in O.S.No.158 of 2014 on the file of Senior Civil Judge, Darsi.

3. The revision-petitioner is the defendant; respondent is the plaintiff in the suit; they are referred to in the revision-petition as they were arrayed in the proceedings before the Trial Court.

4. The contention of the defendant is that the plaintiff filed a suit for recovery of money on the foot of a promissory note; the defendant received summons in the suit, but did not attend the Court as he engaged in agricultural operations; he was set *ex parte* on 30.10.2014; the learned Trial Court passed *ex parte* decree on 06.11.2014; Subsequently, the defendant met his counsel and filed an application to set-aside the *ex parte* decree; hence, the defendant filed applications under Section 5 of the Limitation Act, 1963 (for brevity 'the Act') to condone the



delay of 74 days in filing the application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (for brevity 'CPC') to set-aside the *ex parte* decree, dated 06.11.2014; but, the Trial Court instead of giving liberal construction to the cause, 'Dismissed' the application filed under Section 5 of the Act.

5. Learned counsel for the defendant filed written arguments submitting that the Hon'ble Supreme Court in **Sugandhi (Died) by LRs and others vs. P.Rajkumar** reported in **(2020) 10 Supreme Court Cases 706** held that "procedure is the handmade of justice and technical hurdles shall not be allowed to come in the way of the Court while doing substantial justice." He further submitted that this Court in **Basawaraj and another vs. Special Land Acquisition Officer** reported in **2013 (6) ALT (SC) 43 (D.B.)** and this Court in **K.Chandra Sekhara Rao (Died) per LRs and others vs. District Collector, Ranga Reddy District, Hyderabad and others** reported in **2019 (1) ALT 377** held that "sufficient cause is distinct from good cause and sufficient cause be given liberal interpretation, but only as long as negligence, inaction or lack of *bonafides* cannot be imputed to the party, the limitation be condoned." He would also submit that as per the Judgment of this Court in **M.S.Naudine Pharma, represented by its Partner and another vs. M/s. Med Manor Organics**



Private Limited, represented by its Director reported in **2019**

(2) ALT 270 held that “everyday’s delay need not be explained and the length of the delay is not the criteria, but the correctness of the reasons or explanation for the delay is the important factor and sufficient cause has to be liberally interpreted provided negligence, inaction, lack of *bonafides* etc., are not made out.

6. He also submitted that the High Court of Delhi in **Pawan Kumar Jain vs. G.K.Jain** reported in **2013 SCC OnLine Del 3419** and High Court of Allahabad in **Ravi Sharma vs. Union of India** reported in **2019 SCC OnLine All 2822** held that “when an application for setting aside an *ex parte* decree under Order IX Rule 13 of the CPC is accompanied by an application for condonation of delay, both applications to be heard together” and in the case on hand, the learned Trial Court while dismissing the application under Section 5 of the Act, ‘Returned’ the application filed under Order IX Rule 13 of CPC without passing orders.

7. The learned counsel for the defendant would further submit that the defendant is an agriculturist and an illiterate person and therefore, after receipt of summons he could not engage a counsel to contest the suit, but the Trial Court did not consider the reason properly and ‘Dismissed’ the application to



condone the delay mechanically and thereby, committed irregularity.

8. The learned counsel for the respondent/plaintiff would submit that there is no dispute regarding the principles laid down by the Hon'ble Apex Court and this Court regarding the term 'sufficient cause' laid down in Section 5 of the Act and that, it shall be given a liberal interpretation.

9. He would further submit that the Hon'ble Supreme Court as well as this Court and other High Courts also held that when it is established that the cause pleaded by the petitioner is not proved and when facts establish that he was negligent and has no *bonafides*, and further when certain rights were acquired by the other side, due to the negligence of the petitioner, the delay cannot be condoned causing prejudice to the opposite party.

10. He would further submit that in the case on hand, the defendant pleaded that he was engaged in agricultural operations and therefore, he could not attend the Court at the relevant point in time. It was specifically denied by the plaintiff as false and contended that the petitioner lacks *bonafides*; but the defendant did not place any proof before the Trial Court to establish that he engaged in agricultural operations during the period from



30.10.2014 till filing this application; and on the other hand, the facts would show that he appeared before the Execution Court by engaging counsel and filed counter on receipt of notice under Order XXI Rule 54 of CPC, and participated in the execution proceedings; it would show that the cause pleaded by the defendant is a false one and lacks *bonafides*; further, the plaintiff has taken certain steps in execution proceedings and on contest the Execution Court passed orders attaching the property and in those circumstances, if the application is allowed, all the proceedings in the Execution Petition would come to naught, causing serious prejudice to the rights already acquired by the plaintiff.

11. In the light of the above context of the revision petitioner/defendant and the respondent/plaintiff, the point that arises for consideration is: -

“Whether the Trial Court committed any irregularity in the Order, dated 22.12.2015 passed in I.A.No.404 of 2015 in O.S.No.158 of 2014 on the file of Senior Civil Judge’s Court, Darsi?”

12. **P O I N T**: -

The contention of the defendant is that he received the suit summons, but he could not attend the Court on 30.10.2014 as



he engaged in agricultural operations and as a result, *ex parte* decree was passed on 06.11.2014 and later, he was advised to file an application under Section 5 of the Act to condone the delay of 74 days in filing the application under Order IX Rule 13 of CPC to set-aside the *ex parte* decree, dated 06.11.2014.

13. The contention of the plaintiff before the Trial Court is that the cause pleaded by the defendant is a false and in fact, after passing the decree, execution petition was filed for attachment and sale of EP schedule property and, the defendant contested the proceedings in execution petition by filing counter and after hearing both, the Trial Court ordered attachment and made it absolute and sale notice was issued under Order XXI Rule 64 and 66 of CPC and they also served to the defendant and then, the present application is filed for the reasons best known to the defendant.

14. As rightly argued by the learned counsel for the plaintiff, there is no dispute about the principles relating application of Section 5 of the Act as laid down by the Hon'ble Supreme Court and also by this Court that procedure is the handmade of justice and technical hurdles shall not be allowed to come in the way of the Court while doing substantial justice.



15. It is also settled law as laid down by the Hon'ble Supreme Court in **Sugandhi and Basawaj** cases (supra) that sufficient cause is distinct from good cause and sufficient cause be given liberal interpretation if negligence, inaction, or lack of *bonafides* cannot be imputed to the defendant.

16. It is also an established principle of law that if negligence, inaction, or lack of *bonafides* are made out and the cause pleaded by the petitioner is not established, the Court has no power to extend the limitation on equitable grounds.

17. In the case on hand, admittedly, the defendant received suit summons and he shall appear before the Trial Court on 30.10.2014, but he did not appear before the Trial Court. The case was adjourned to 06.11.2014. On that day also he did not appear and therefore, the Trial Court passed the *ex parte* decree. It is also an admitted fact that subsequently, the plaintiff filed Execution Petition against the defendant under Order XXI Rule 54, 64 and 66 of CPC for sale of EP schedule property. The defendant participated in the execution proceedings, filed counter and the Execution Court, on merits made the interim attachment absolute and ordered 'Sale Notice'.



18. The defendant did not place any proof before the Trial Court to establish that he was busy in agricultural operations at the relevant point in time, and therefore, he could not attend the Court.

19. When the opposite party disputed the truth of the cause pleaded by the petitioner, it shall be established on facts, then only, the question whether it is a sufficient cause would arise, and while considering the same, it can be given a liberal interpretation.

20. In the case on hand, the Trial Court found that the cause put-forth by the defendant was not established and on the other hand, the facts and circumstances would establish that the defendant lacks *bonafides* and negligent. Hence, no illegality was committed by the learned trial Court.

21. It is an admitted fact that the Trial Court 'Dismissed' the application filed under Section 5 of the Act and then 'Returned' the application filed under Order IX Rule 13 CPC instead of passing the orders 'Rejecting' the application. In the above circumstances of the case, it will not improve the case of the petitioner.



22. In the light of above discussion, this Court is of the considered opinion that the Trial Court did not commit any illegality and the revision-petition is deserved to be dismissed.

23. Accordingly, Civil Revision Petition is 'Dismissed'. There shall be no order as to costs.

24. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE B.V.L.N. CHAKRAVARTHI

27th June, 2023.

Note:

LR Copy is to be marked.

B/o.
DNB