
(2014) 06 KAR CK 0120

Karnataka High Court (Dharwad Bench)

Case No: Writ Petition No. 105504 of 2014 (GM-FC)

D. Abdullah Sab

APPELLANT

Vs

Syed Abdul Jabbar

RESPONDENT

Date of Decision: June 30, 2014

Acts Referred:

- Limitation Act, 1963 - Section 5

Citation: (2014) 4 KarLJ 461 : (2014) 4 KCCR 3539

Hon'ble Judges: A.N. Venugopal Gowda, J

Bench: Single Bench

Advocate: Harsh Desai, Advocate for the Appellant; Malati Reddy for Y. Lakshmikanth Reddy, Advocate for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

A.N. Venugopala Gowda, J.

Miscellaneous Case No. 3 of 2011 was filed on 30-4-2011, in the Vacation Court at Bellary, to set aside the decree passed on 25-7-2008 in O.S. No. 390 of 2008. Along with the said petition, I.A. No. 1 was filed u/s 5 of Limitation Act, 1963, to condone the delay in presenting the petition. The petitioner herein filed statement of objections and opposed I.A. No. 2 by filing a counter. The Court below having allowed I.A. No. 1 and condoned the delay, as per order dated 21-3-2014, feeling aggrieved, this writ petition was filed. Heard the learned Counsel on both sides and perused the writ petition record.

2. The Trial Court has committed a material error and irregularity in deciding I.A. No. 1, without recording the evidence, since I.A. No. 1 was opposed by filing a counter. In the counter filed, all the assertions made in the affidavit filed in support of the I.A. having been denied, there is need for the respondent herein, to adduce evidence.

3. Since there is need for adducing evidence, both on I.A. No. 1 and the main petition, the Court below ought to have posted the case for enquiry and permitted both the parties to adduce evidence i.e., both on the main petition as well as application seeking condonation of delay. The course of action which has been adopted by the Court below is wholly erroneous.

Yet another aspect to be pointed out is, that the finding recorded at para 13 of the impugned order, is virtually on the merit of the case. While deciding the I.A. No. 1, the Trial Court could not have made any observation with regard to the service of suit summons or otherwise, the finding shows there is an element of prejudging, which is not permissible at this stage of the case.

In the result, the writ petition is allowed. The impugned order is quashed. The Trial Court is directed to consider I.A. No. 1 along with the main petition, by keeping in view the observations made supra. It is open to the respondent herein to adduce evidence both on the main petition - miscellaneous case and I.A. No. 1 filed along with it. Needless to observe that petitioners herein, who are the respondents in the case pending before the Court below, are at liberty to adduce their side of evidence.

The respondent herein shall first adduce the evidence and complete his case within a period of two months from the next hearing date and the petitioners herein, who are the respondents in the Court below, shall complete their case within a period of two months from the date the petitioners close their side and the case be decided within a period of one month from the date the enquiry is completed.