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K. Ebrahim and Co., Proprietor, K. Mohammad Yonus Vs Innamuri Venkatachalamayya

Civil Revision Petition No. 1785 of 1992

Court: Andhra Pradesh High Court

Date of Decision: Sept. 23, 1992

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 9 Rule 13, 115, 151#Limitation Act, 1963 â€" Section 5

Citation: (1992) 3 ALT 668

Hon'ble Judges: N.D. Patnaik, J

Bench: Single Bench

Advocate: T. Veerabhadrayya, T.S. Anand and Y. Srinivasa Murhty, for the Appellant; V.S.R. Anjaneyulu and T.V.S. Prabhakar Rao, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N.D. Patnaik, J.
The respondent in this Civil Revision Petition filed a suit O.S. No. 14 of 1991 on the file of the Subordinate Judge, Tenali

against the petitioner herein for recovery of some money. In the said suit, the petitioner-defendant was set ex parte, and ex parte decree was

passed and the respondent-plaintiff filed a petition to execute the said decree. Then, the petitioner filed an application under Order IX, Rule 13

C.P.C. seeking to set aside the ex parte decree. As there was some delay in filing that application, he filed an application u/s 5 of the Limitation

Act to condone the delay. As the execution is pending, the petitioner filed an application u/s 151 C.P.C. to stay further proceedings in the

execution petition. The lower Court allowed that application granting stay of execution on condition of the petitioner depositing into court costs

awarded in the suit and also half the decretal amount. The petitioner filed this Revision aggrieved by the order of the lower Court imposing

condition regarding the deposit of suit costs and half the decretal amount.

2. The learned counsel for the petitioner contends that the condition imposed by the lower Court is onerous and the Court has no power to impose

such a condition. For this, the learned counsel has referred to a Division Bench decision of this Court in Rajeswara Industries, a Partnersip Firm,

D4 Unit and Others Vs. State Bank of Hyderabad, Karimnagar Branch,

3. In the aforesaid decision what has happened was when the defendant filed an application under Or.IX, Rule 13 C.P.C. to set aside the ex parte

decree, the court even before numbering the application imposed a ""condition that he should deposit the costs as well as half of the suit amount as

a condition precedent for entertaining the said petition and as he failed to fulfil the condition, the application was dismissed. The Division Bench

held that the Court cannot even before going into the merits of the application filed under Or.IX, Rule 13 C.P.C. impose condition upon the

defendants for depositing the costs or part or whole of the suit amount as a condition precedent for entertaining the said Interlocutory Application

under Or.IX, Rule 13 CPC.

4. The learned counsel for the petitioner has also referred to another decision reported in V. Kasturi Bai v. P. Vara Lakshmi 1983 (1) APLJ 305 :

1983 (1) ALT 402 in which Justice Ramaswamy as he then was, pointed out "no doubt the Court has power to direct for depositing half of the

amount decreed ex parte, but that power has to be exercised only in special circumstances obtainable on the facts of that case and the Court has

to give reasons thereof. Discretion cannot be put on the pedestal of the whims of the Court, but to be exercised carefully taking into account the

well settled principles of law to advance the cause of justice depending upon the facts and circumstances in each case". That is also a case where

the Court while allowing an application filed under Order IX, Rule 13 C.P.C. imposed a condition directing him to deposit half the decretal

amount.

5. As pointed by the learned counsel for the respondent, this order was not passed in an application under Order IX, Rule 13 C.P.C. In fact, that

stage has not yet reached, because the application filed u/s 5 of the Limitation Act is still pending. When the petitioner who is the Judgment-debtor

invoked the inherent powers of the Court u/s 151 of the CPC seeking stay of execution of the decree, pending disposal of the application u/s 5 of

the Limitation Act, the Court exercised discretion u/s 151 of the CPC and directed stay of execution of the decree on the condition that the

petitioner shall deposit the suit costs and half the decretal amount. It is purely a discretionary order passed by the lower Court in exercising the

inherent powers u/s 151 C.P.C. Therefore, I do not find any error of jurisdiction in passing the order under Revision. The petitioner is granted two

months time from to-day to deposit the amount as ordered by the lower Court. If the petitioner does not deposit die amount within the period of

two months, the stay shall stand vacated.

6. The revision is, therefore, dismissed. No costs.