

Motaparthi Vasantha Devi and Others Vs P. Padmanabha Sharma and Another

Court: Andhra Pradesh High Court

Date of Decision: Nov. 23, 1999

Acts Referred: Civil Procedure Code, 1908 (CPC) " Order 9 Rule 13, Order 9 Rule 7

Citation: (2000) 1 ALT 653 : (2000) 2 CivCC 447

Hon'ble Judges: C.V.N. Sastri, J

Bench: Single Bench

Advocate: V.S.R. Anjaneyulu, for the Appellant; K.V. Satyanarayana, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

C.V.N. Sastri, J.

The two Civil Revision Miscellaneous Appeals can be disposed by a Common Order as the facts are almost identical.

They arise out of applications to set-aside the ex parte decrees passed on 10-8-1999 in two suits filed for specific performance of contracts of

sale. It is not in dispute that earlier when the defendants were set-ex parte, they filed applications under Order 9 Rule 7 CPC to set-aside the order

setting them ex parte and the said applications were allowed on 1-4-1999 subject to the condition that the defendants should pay Rs. 200/-each

by way of costs on or before 12-4-1999. Stating that due to some confusion in making the entries in the Court diary, they could not notice the

order dt. 1-4-1999 and as such they could not pay the costs on or before 12-4-1999 as directed, the defendants filed applications for extension of

time to deposit the costs. But the said applications were dismissed on 30-6-1999. Thereafter, they filed applications for restoration of the

applications filed under Order 9, Rule 7 CPC but these applications were also dismissed on 10-8-1999 and on the same day ex parte decrees

were passed in the suits. The defendants, therefore, filed the instant applications to set-aside the ex parte decrees dt 10-8-1999. By the impugned

orders, the lower Court dismissed these applications firstly on the ground that only the 3rd defendant filed the affidavit in support of the

applications and no affidavits are filed by the other two defendants and secondly on the ground that in as much as the explanation offered by the

defendants was earlier rejected while dismissing the applications for extension of time, the same cannot be treated as a sufficient cause for setting-

aside the ex parte decrees. It was also observed that the defendants gave inconsistent versions for their failure to appear on the relevant date.

2. After hearing the learned Counsel for both parties at some length and also after perusing the impugned orders, I am satisfied that the lower

Court has acted in a hyper technical manner in rejecting the applications for setting-aside the ex parte decrees. It is well settled that the expression

"sufficient cause" occurring in Order 9, Rule 13 CPC should be construed liberally so as to advance the cause of substantial justice but not to

punish the parties for their mistakes. Having regard to the fact that the earlier applications filed by the defendants under Order 9, Rule 7 CPC were

allowed subject to payment of Rs. 200/- by way of costs and having regard to the nature of the two suits which relate to immovable property, I

feel that the ends of justice require that the appellant should be given an opportunity to contest the suits on merits by setting-aside the ex parte

decrees. However, having regard to the facts and circumstances, the appellants should be put on terms once again in this Court for allowing the

appeals. Accordingly, the appeals are allowed subject to payment of Rs. 500/- in each case by way of costs to the Counsel for the respondents.

The Counsel for the appellant has offered to pay the same today itself to the learned Counsel for the respondents. The learned Counsel for the

respondents, however, declined to receive the same and requested that the amount may be deposited in the lower Court. The appellants are,

therefore, directed to deposit the said amounts in the lower Court within 2 weeks from the date of receipt of this order. No costs.