(1991) 03 AP CK 0005

Andhra Pradesh High Court

Case No: Civil Miscellaneous Petition No''s. 2267 and 2268 of 1991 and 12529 of 1990 (in CRP No. 3663 of 1989)

Golla Ramulu and Another	APPELLANT
Vs	
Hari Joshi (died) per his L.Rs.	RESPONDENT

Date of Decision: March 5, 1991

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 10A, Order 22 Rule 4, 115
- Limitation Act, 1963 - Section 5

Citation: (1991) 2 ALT 93

Hon'ble Judges: P.L.N. Saram, J

Bench: Single Bench

Advocate: B. Veerabhadra Rao, for the Appellant; M. Rama Rao, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P.L.N. Saram, J.
C.M.P. No. 2268 of 1991 was one filed u/s 5 of Limitation Act to condone the delay of 242 days in filing the application to set aside the abatement caused by the death of the sole respondent.

2. C.M.P. 2267 of 1991 was filed under Order 22, Rule 4 CPC to set aside the abatement caused by the death of the sole respondent and C.M.P. No. 12529 of 1990 was filed to bring on record the legal representatives of the sole respondent in the revision.

3. In the affidavit filed in support of the applications, it is stated that the advocate appearing for the sole respondent in the revision petition informed their Advocate by his letter dt. 22-3-1990 that the sole respondent in the revision petition died on 16-1-1990. Immediately thereafter, they caused enquiries and came to know that the said statement is correct and also on enquiries they came to know that the sole

respondent died issue-less and his brother''s sons, viz., the persons sought to be impleaded are the legal representatives to be brought on record. In view of the above, they prayed that the respondents may be brought on record as the legal representatives of the sole respondent. The application was filed on 19-7-1990.

4. Counter was filed on behalf of the parties who are sought to be impleaded as legal representatives. It was mentioned in the counter that the sole respondent died on 16-1-1990 and the said fact was informed to the counsel appearing on behalf of the petitioners by a letter dt. 22-3-1990. But the application to bring the legal representatives was filed only in the month of July. 1990 and therefore, there was delay in filing the application and no reasons are given for filing the application after the stipulated time. Therefore, it is stated that the application should be dismissed.

5. When the application C.M.P. No. 12529 of 1990 was filed, the office seems to have taken an objection that an application to condone the delay will have to be filed. Therefore, the other two applications were filed, one for condoning the delay in seeking to set aside the abatement and the other for setting aside the abatement.

6. Sri M. Rama Rao, learned counsel for the legal representatives who are sought to be impleaded contended that the counsel for the petitioners was informed on 22-3-90 by a letter of even date about the death of the sole respondent. But the application was filed to bring the legal representatives of the sole respondent on record only on 19-7-1990. There is no explanation for the delay. No reasons are given and no sufficient cause is established for filing the application after an inordinate delay and therefore, the applications should be dismissed.

7. On the other hand, the learned counsel for the petitioners contended that even though the letter dated 22-3-1990 was served on him, the party was informed of the same only in May, 1990. Immediately, the petitioners enquired about the said fact and after making enquiries, they have given necessary instructions and the application was filed on 19-7-1990. Therefore, there was sufficient cause for not filing the application within the time.

8. There are two aspects in this case. In the affidavit filed in support of the application, nowhere it was stated that the party was informed immediately by the counsel for the petitioners on receipt of the letter dated 22-3-1990 about the date of death of the sole respondent. In view of the statement made before me by the counsel for the petitioners that he informed the party only in the month of May, 1990 and the applications have been filed on 19-7-90 after making necessary enquiries with regard to the legal representatives, in my opinion, the delay was sufficiently explained. In this connection one must bear in mind the introduction of Rule 10-A of Order 22 CPC. This provision was newly inserted by CPC (Amendment) Act, 1976. It imposes an obligation on the advocate of a party to communicate to the court about the death of the party whom he was representing and it is further provides that for that purpose the contract between the pleader and the deceased

party shall be deemed to subsist. The provision was introduced specifically to mitigate the hardship arising from the fact that the party to an appeal may not come to know about the death of the other party during the pendency of the appeal. The duty is cast upon the advocate appearing for the party who comes to know about the death of the party to communicate to the court about the same.

9. It is true that the limitation commences from the date of the death, (vide) Doddappa Maritammappa Basaput and Another Vs. Erappa Mudakappa Navalli and Others, . But even so, it was held that the court should not adopt an over-strict view in construing whether sufficient cause has been established or not. (vide Food Corporation of India, Tadepalligudem Vs. Sri Ramachandra Boiled and Raw Rice Mill and Others, .

10. It was held in Y.V. Lakshmana Rao & Anr. v. Y. V. Rao and Ors.,(1988 (1) Law Summary 213) that the knowledge of the advocate about the death of the party cannot be imputed to the party. It means the knowledge of the counsel of the petitioner about the death of the sole respondent in the revision (given by way of a letter dated 22-3-1990) cannot be imputed to the petitioners. The petitioners came to know about the death of the sole respondent only when they were informed by their Advocate by the end of May, 1990 and they have taken time for enquiry and filed the application on 19-7-1990 itself within a period of 49 days. It was also held in Gangadhar and Another Vs. Raj Kumar, that in approaching the matter, the courts should take note of Rule 10-A of Order 22 CPC which has brought in an important change and which has been deliberately made to cater to situations like this.

11. In fact, it was held in State of A.P. and Another Vs. K. Anil Kumar etc. etc., that the laws of procedure are designed for advancing justice and not impeding the same and that the code of procedure is designed to facilitate justice and further its ends. The learned Judges categorically held that the code of procedure is not a penal enactment for punishment and penalty.

12. Likewise, in O.P. Kathpalia Vs. Lakhmir Singh (Dead) and Others, elay of five years for substitution of heirs and legal representatives was condoned. The learned judges referred to Rule 10-A of Order 22 CPC in that connection.

13. Sri M. Rama Rao, learned counsel for the legal representatives opposing this application contended that the limitation commences from the date of death and that no details are given and that not a single reason for condoning the delay was given in the affidavit and every day''s delay should be explained and therefore, this petition has to be dismissed. I have already dealt with this aspect in the foregoing paragraphs. There is no inordinate delay in filing the application. In fact, the sole respondent died on 16-1-1990 and the counsel for the sole respondent by his letter dated 22-3-1990 informed the counsel for the petitioners about the death. Strictly speaking, letter should have been filed in the registry. Whatever it may be afier receiving the information about the death of the sole respondent, the counsel for

the petitioners informed the petitioners only in the month of May, 1990 and thereafter, they have taken only 49 days for making enquiries about the said fact and filing the application. Even though limitation commences from the date of the death of the sole respondent, taking into consideration the object of Rule 10-A of Order 22 CPC and also the arguments advanced before me that the party was informed by the counsel for the petitioners only by the end of May, 1990 and taking into consideration the enquiries made by them, the application filed on 19-7-1990 cannot be said to be unsustainable. I am satisfied that the explanation given for the delay in filing the application is acceptable. In these matters, the approach should not be pedantic but should be pragmatic. Rules of procedure are intended to be a hand-maid to the administration of justice and shall be construed to advance justice and not in a manner to penalise the parties. In that view of the matter, I have no hesitation in ordering these applications.

14. There is one other way of looking at the problem.

15. A Division Bench of this court in Commissioner of Income Tax, Hyderabad v. Chulam Hyder Khan,(1962 (II) An.W.R. 154) categorically held that Order 22 CPC would govern only ''suits'' and ''appeals'', and that Order 22 is inapplicable to Civil Revision Petitions u/s 115 CPC. The learned Judges held that the said proposition is well established and relied upon, for that purpose, the judgment reported in Manikam v. Ramanathan (AIR 1949 Madras 435).

16. Sri M. Rama Rao, learned counsel for the respondents contended that the Calcutta High Court in a Judgment reported in State Bank of India Vs. S. Wazir Singh and Others, has taken the view that the provisions of Order 22 CPC will apply to Civil Revision Petitions u/s 115 CPC and that should be accepted and followed by me. The learned counsel referred in that connection to a decision in Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, which was relied upon by the Calcutta High Court to come to the conclusion which it did in the above decision. In my opinion, the learned Judges of the Supreme Court in the decision referred to supra (7) were considering the theory of merger and held that the jurisdiction that is being exercised by the High Court was that of appellate jurisdiction. In the abovesaid case disposed of by the learned judges of the Supreme Court, an order of the appellate court under Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947) was questioned in the High Court by way of a revision. The High Court dismissed the said revision after hearing both the parties. Subsequently, proceedings were taken under Articles 226 and 227 of the Constitution of India questioning the appellate order which was already questioned unsuccessfully by way of a revision earlier. The question raised there was whether the proceedings under Articles 226 and 227 of the Constitution of India were maintainable after the dismissal of revision against the self-same order or not. In that connection, the learned Judges were discussing the theory of merger. The learned judges held that when once the revision u/s 115 of CPC was dismissed, preferred against the appellate order, the appellate order

gels merged in the revisional order of the High Court aid thereafter the appellate order under the provisions of the Act will not exist and the proceedings taken under Articles 226227 and 227 of the Constitution of India to question the appellate order subsequently is not maintainable. In that connection the argument that was advanced before the learned judges of the Supreme Court was that the merger theory applied only in the case of appeal and not in the case of revision. Repelling that contention, the learned Judges of the Supreme Court held that when the aid of the High Court is invoked on the revisional side it is done because it is a superior court and it can interfere for the purpose of rectifying the error of the Court below. Even though the jurisdiction u/s 115 of CPC by the High Court is circumscribed by the limits of that jurisdiction, still the jurisdiction which is being exercised was part of the general appellate jurisdiction of the High Court as a superior court and therefore, the order of the Appellate authority gets merged in the order of the High Court passed in revision u/s 115 of CPC.

17. In my humble opinion, the decision referred to supra (7) is not an authority for the proposition that the provisions of Order 22 CPC will apply to revision u/s 115 CPC. The learned Judges of the Supreme Court were not dealing with the problem that is posed in the present application. On the other hand, the decision of the Division Bench of this court, referred to supra (5) is directly in point and deals with the provisions of Order 22 CPC with reference to applicability to the proceedings u/s 115 CPC. '' I am bound by the Judgment of the Division Bench of this court which followed the decision of the Madras High Court in Manickam v. Ramanathan (AIR 1949 Mad. 435). Therefore, alternatively also, I hold that the provisions of Order 22 CPC have no application to the proceedings u/s 115 CPC and the death of the sole respondent in the revision does not abate the main revision petition itself.

18. In view of what is stated above, all the three applications are allowed. No costs.