

Garagiah Vs. Manche Gowda

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Court : Karnataka

Decided On : Nov-20-1970

Reported in : AIR1971Kant178; AIR1971Mys178; (1971)1MysLJ53

Judge : G.K. Govinda Bhat, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 95; [Limitation Act, 1963](#) - Schedule - Article 137

Appeal No. : Civil Revn. Petn. No. 154 of 1970

Appellant : Garagiah

Respondent : Manche Gowda

Advocate for Def. : M. Papanna, Adv.

Advocate for Pet/Ap. : Y. Adinarayana Rao, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

G.K. Govinda Bhat, J.

1. The question that arises for decision in this Civil Revision Petition is whether the right to make an application under Section 95 of the Code of Civil Procedure arises

on the date when the order of injunction is granted. The matter arises in this way. The petitioner was the plaintiff in O. S. No. 624 of 1963 on the file of the Court of the Munsiff, Ramanagaram and the respondent was the defendant in the said suit. In the said suit, the plaintiff obtained an order of temporary injunction against the defendant on 16-12-1963. That order was dissolved on 24-10-1964 in the appeal preferred by the defendant. The suit after trial was dismissed on 23-8-1966. There was no appeal against the decree dismissing the suit. _____

2. On 20-3-1967 the defendant filed I. A. No. 15 under Section 95 of the Code of Civil Procedure, in the Court of the Munsiff, Ramanagaram for compensation on the following two grounds: (i) that the temporary injunction was applied for on insufficient grounds, and (ii) that the plaintiff's suit had failed and there was no reasonable or probable ground for instituting the same. The plaintiff contested the said application; among other grounds, he contended that the application was barred by limitation. The court of the Munsiff upheld the contention of the plaintiff and dismissed the application on the ground that it was barred by limitation. On appeal preferred by the defendant to the court of the Civil Judge, Bangalore District in M. A. No. 3 of 1968, the order of the trial court was reversed holding that the application was not barred by limitation and therefore the matter was remanded for enquiring on the question of the amount of damages. Against the said order the plaintiff has preferred the above revision petition.

3. Sri Adinarayana Rao, the learned counsel for the petitioner urged that the defendant's right to apply under Section 95 of the Code accrued when the order of temporary injunction was granted and that under Article 137 of the Schedule to the [Limitation Act, 1963](#), the application is barred by time and that the view of the law taken by the Court below that the right to apply accrued only on the dismissal of the suit on 23-8-1966 is erroneous.

4. It is common ground that the Article of Limitation that governs the application is Article 137 which provides a period of three years from the date when the right to apply accrues. The question therefore for determination is whether the right to make an application under Section 95 of the Code accrues when an order of temporary injunction is granted. Sub-section (1) of Section 95 of the Code which is

the relevant provision reads thus:

'95. Compensation for obtaining arrest, attachment or injunction on insufficient grounds.-

(1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding Section:--

'(a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or

(b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same.

The defendant may apply to the Court and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expenses or injury caused to him:

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction'.

This section provides for compensation to the defendant in the two following cases: (1) where a temporary injunction has been granted and such injunction was applied for on insufficient grounds, (2) where a temporary injunction has been granted and the plaintiff fails in the suit and further there was no reasonable or probable ground for instituting the suit. The cases falling under Class (1) come under Clause (a) of Subsection (1) of Section 95 and cases fall-in under Class (2) come under Clause (b) of Sub-section (1) of Section 95. On a plain reading of the section without reference to any decided cases, it appears to me that in the class of cases coming under Clause (a), the right to apply accrues only when the temporary injunction is vacated or dissolved either by the court granting the injunction or by the higher courts on appeal or revision, and that in the class of cases falling under Clause (b), the right to apply accrues when the suit of the plaintiff fails.

5. The application under Section 95 is an interlocutory application made to the court granting the order of temporary injunction. Where the order of temporary injunction is made after hearing the parties, so long as that order is in operation, the court which granted the injunction cannot say that it was applied for on insufficient grounds. Similarly, the court cannot say before the suit fails that there was no reasonable or probable ground for instituting the same. This view of mine is supported by the decision in Venkatappayya v. Venkatappayya AIR 1923 Mad 352. In the said decision Ramesam, J. stated that the stage for an application under Section 95 would be only when the suit is heard and upto then, such a petition would be premature. The view expressed by Ramesam, J. was followed by a Bench of the same Court in Khalilur Rahaman y. Syed Hussain : AIR1961 Mad220 . Rajamannar, C. J. who delivered the judgment reviewed all the earlier cases and came to the conclusion that so long as the order has not been set aside either by appeal or otherwise, an application under Section 95 of the Code cannot be allowed on the ground that the order had been procured on insufficient grounds.

6. Sri Adinarayana Rao the learned counsel for the petitioner has relied on the decision in Kanthammal v. Rajalakshmi : AIR1961 Mad352 . That Was a decision by Balakrishna Ayyar, J., who held that the right to apply accrues when the attachment was effected, because it is the attachment that is the foundation of the grievance of the applicant. There is no discussion in the decision of Balakrishna Ayyar, J. and the learned Judge states that no authority on the point was placed before him and the matter is therefore one of first impression and he is inclined to read the words 'when the right to apply accrues' as relating to the time when the attachment was first effected. The earlier decisions of the same court which held that the right to apply does not accrue until the order is set aside were not placed before the learned Judge. I am in respectful agreement with the view of the law stated by Rajamannar, C. J. in Khalilur Rahaman's case : AIR1961 Mad220 . In that view of the matter, the court below was right in holding that the defendant's application is not barred by time.

7. For the above reasons, this revision petition fails and is dismissed with costs.

