Seetha and ors. Vs. Rani and ors.

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SooperKanoon Citation : sooperkanoon.com/826282

Court : Chennai

Decided On : Dec-08-1995

Reported in : (1996)1MLJ371

Appellant : Seetha and ors.

Respondent : Rani and ors.

Judgement :
ORDER

Abdul Hadi, J.

1. The defendants have preferred this civil revision against the dismissal of their C.M.P. No. 796 of 1995 praying for excusing the delay of 39 days in filing the interlocutory application to restore the C.M.A. No. 19 of 1995 filed by them. In the suit ex parte decree was passed as early as 17.2.1992 whereby the plaintiff who are widow and son of the deceased employee in question could secure the terminal benefits from the employer of the deceased, to the extent of about Rs. 40,000. The petitioner's herein filed I.A. No. 10410 of 1993 to set aside the ex parte decree. (No doubt the other I.A. No. 1548 of 1993 filed by them to excuse the delay of 306 days in filing the application to set aside the decree is said to have been allowed). The said I.A. No. 10410 of 1993 was dismissed on 11.1.1995. As against the said dismissal the abovesaid C.M.A. No. 19 of 1995 was filed by the petitioners herein. But that was allowed to be dismissed for default on

21.4.1995. And that is why in view of the said delay in filing the application to restore the said C.M.A. No. 19 of 1995, C.M.P. No. 796 of 1995 was filed.

2. The court below in its impugned order gives two reasons for dismissing the C.M.P. No. 796 of 1995.

(i) The reason given in the supporting affidavit is unacceptable in the absence of any supporting evidence:

(ii) The petition has been filed only as a delaying tactics for causing inconvenience and loss to the respondents.

3. Despite the vehement argument of the learned Counsel for the petitioners, I am unable to see any error at all in the above reasoning of the court below. As already indicated there were very many defaults on the part of the petitioners herein which would only indicate the abovesaid delaying tactics adopted by the petitioner. Firstly, the suit was allowed to be decreased ex parte, secondly, there was a delay of 306 days in filing the petition to set aside the abovesaid ex parte decree. Thirdly, C.M.A. No. 19 of 1995 was allowed to be dismissed for default. Fourthly, there was a delay of 39 days in filing the I.A. No. 10410 of 1993 for restoration of the C.M.A. No. 19 of 1995. Ex parte decree was granted as early as on 17.2.1992 and so far the respondents could not secure the abovesaid terminal benefits and thereby obtain the fruits of the decree in their favour.

4. All these apart, in the above referred to supporting affidavit, the relevant allegation is as follows:

The above C.M.A. was posted for hearing before this Hon'ble Court on 4.4.1995. On that date, the matter was adjourned to 20.4.1995. But Mr. Y. Sasikumar, Junior Advocate to my counsel took the date of hearing as 20.6.1995 instead of 20.4.1995. In the circumstances when the matter was called on 20.4.1995, or 21.4.1995, no counsel appeared on my behalf of the appellants. This Hon'ble Court was pleased to dismiss the C.M.A. for default on 21.4.1995.

Though in this way the blame is put on Mr. Y. Sasikumar, Junior Advocate, no affidavit from him has been filed at all showing that he wrongly noted the date as

stated above. He is the best person to say about the alleged wrong noting, but such a person has not filed any affidavit. Therefore, there is no case for interference with the reasoning of the court below saying that the reason given in the affidavit of the first petitioner is unacceptable in the absence of any supporting evidence.

5. The net result is, there is absolutely no case for my interference under Section 115, Civil Procedure Code under which error of jurisdiction alone can be canvassed. There is absolutely no error, leave alone, error of jurisdiction, in the impugned order.

6. No doubt learned Counsel for the petitioners relied on Collector, Land Acquisition v. K. Katiji : (1987)ILLJ500SC , where certain principles were laid down by the Supreme Court in a case where delay of four days was not excused by the court below. Learned Counsel for the petitioners, particularly pointed out the following principle laid down by the Supreme Court.

When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

But, first of all, with any definiteness it cannot be said where actually substantial justice lies, in the present case. That apart, the terminology used in the abovesaid passage of the Supreme Court is 'Non-Deliberate delay'. The conduct of the petitioners as narrated above cannot at all lead to the conclusion that the delay in this case is a non-deliberate one. Therefore, there is no scope at all for the application of the said decision to the present facts.

7. Learned Counsel for the petitioners also drew my attention to the fact that at one stage even a compromise memo was filed by both the rival parties and in such a situation the C.M.A. No. 19 of 1995 must be restored and allowed to be heard on merits. But, first of all, the said compromise memo has not been signed on behalf of the minor defendant (defendant No. 2). Further, it is also not clear whether necessary formalities prescribed in Civil Procedure Code (particularly

Order 32, Rule 7 thereof), pertaining to a compromise on behalf of minors have been complied with. Further, in the counter in C.M.P. No. 796 of 1995, the respondents have also stated thus:.that subsequent to filing the compromise memo before the Honourable Trial court, the 1st petitioner started to say that she will not pay even a paise to anybody out of the service benefits.... I and my son...decided to withdraw the compromise memo filed.

In the light of the above facts, I cannot come to a difference conclusion. I see no merit at all. Hence, this C.R.P. No. 3319 of 1995 is not admitted but dismissed.