

Baskar Rao Vs. M/S.Rr Sudha Agencies (Pvt.)ltd. and ors.

Baskar Rao Vs. M/S.Rr Sudha Agencies (Pvt.)ltd. and ors.

SooperKanoon Citation : sooperkanoon.com/923477

Court : Chennai

Decided On : Dec-15-2011

Judge : R.Sudhakar, J.

Acts : Limitation Act - Section 5

Appeal No. : Civil Revision Petition (NPD) No.4755 of 2011 and M.P.No.1 of 2011

Appellant : Baskar Rao

Respondent : M/S.Rr Sudha Agencies (Pvt.)ltd. and ors.

Advocate for Pet/Ap. : Mr.R.Nagasundaram, Adv.

Judgement :

This Civil Revision Petition is filed challenging the order and decreetal order dated 4.7.2011 passed in I.A.No.277 of 2011 in O.S.No.7345 of 2006 on the file of the VI Assistant City Civil Judge, Chennai.

2. Plaintiff filed the suit O.S.No.7345 of 2006 for recovery of money outstanding. The admitted case is that the suit summons were served on the third defendant/revision petitioner. However, according to the third defendant/revision petitioner, he resigned from the company on 23.2.2005. Therefore, he handed over the suit summons to the other defendants who undertook to defend the suit. The revision petitioner was shocked to receive notice in the execution proceedings on 10.11.2010 and realised that an ex parte decree was passed against him.

Thereafter, he filed application I.A.No.277 of 2011 on 7.12.2010 under Section 5 of the Limitation Act to condone the delay of 1239 days in filing the application to set aside the ex parte decree dated 17.7.2007 passed in O.S.No.7345 of 2006.

3. The I.A.No.277 of 2011 was resisted by the plaintiff, the first respondent herein and the application came to be dismissed on 4.7.2011 holding as follows:- “Heard Both Sides. The suit has been filed for the recovery of amount and it has been decreed ex parte. Now E.P. has also been filed and it is pending. Meanwhile this petitioner/3rd defendant who happen to be one of Directors having resigned and disputed only the quantum amount had come forward with the petition to set aside ex parte decree much belatedly. In order to delay & defeat the E.P. Proceedings, this petition has been filed. There is no bona fide, truth or genuineness to consider the facts stated in this petition. Each and every day delay has not been explained. Hence, this petition is dismissed.” Challenging the dismissal order as above, the third defendant filed this revision petition.

4. Learned counsel for the revision petitioner contended that the revision petitioner resigned from the company on 23.2.2005 and handed over the suit summons to the other defendants. He was totally kept in the dark and came to know about the ex parte decree only on 10.11.2010 on notice in the E.P. Proceedings. The next contention is that the ex parte decree has been passed based on the written statement filed before the court which was not filed by him. The signatures found in the written statement are not that of the revision petitioner. Therefore, the third defendant, the revision petitioner herein prayed for condoning the delay. The same plea is made before this Court as well.

5. On going through the order and the facts as stated by the revision petitioner, this court is not inclined to set aside the order under challenge or show any indulgence for the following reasons:- (i) The revision petitioner/third defendant, who claims to have resigned from the company on 23.2.2005 has not chosen to file any document before the court below and has not let in any evidence to prove that he has resigned from the company on that date. (ii) He has not shown any proof that he handed over the suit summons to the other defendants to take the plea of no knowledge.

(iii) Prima facie no material is placed before the court below to show that the signature in the written statement is not that of the revision petitioner. Therefore, it appears to be a self serving plea with no basis.

6. Paragraphs 2 and 3 of the affidavit filed in I.A.No.7345 of 2010 which contains the reasons for non appearance after receipt of suit summons is extracted hereunder:- “2) I state that I received a notice from the District Munsif Court, Poonamallee in E.P.No.178 of 2010, filed by the first respondent herein on 10.11.2010. The notice was served by the Bailiff of the said court on 10.11.2010 at my residence in the above address. I was shocked to receive the said notice since I have resigned from the post of the Director of the second respondent company on 23.02.2005 itself and I was no way concerned either with the second or with the third respondent. On verification of the execution petition, I came to understand that the first respondent had filed the said execution petition, to execute the ex parte decree passed by this Hon'ble Court on 17.07.2007 by attachment and sale of the movable properties in my residence. 3) I state that on service of such notice, I came to understand that the first respondent had filed the above suit praying for a decree directing me and the second and third respondents herein to pay a sum of Rs.80,000/- together with interest @ 24% p.a. with cost being the amount due and payable by the second respondent for the goods supplied by the first respondent herein in the course of its business. I humbly submit that I have received a summon in the above suit from this Hon'ble court during 2007. Since I have resigned from the second respondent company on 23.02.2005 itself, I called upon the third respondent and enquired about it. It was informed by the third respondent herein that he will contest the suit even on my behalf and requested me not to precipitate the issue. Believing his words I have handed over the summons to him and I was totally kept in dark. I came to understand about the decree passed by this Hon'ble court only on 10.11.2010, that too when the summons was served on me in the execution petition.” The revision petitioner, the third defendant could have established that he had resigned from the company and that he has handed over suit summons to the other defendants by any material evidence. He has not chosen to appear before the court below, file relevant documents and let in any evidence, more particularly, with regard to the plea of fraud or handing over the case to other defendants. Having chosen not to file any document or examine

himself as witness, the court below was justified in dismissing the application which has been filed after 1239 days, which is almost 3-1/2 years. Merely stating that he resigned from the company on a particular date and alleging fraud, will not entitle the revision petitioner to seek condonation of delay. There is no basis for the statement made in the affidavit filed in support of the petition. Such an unsubstantiated plea cannot be accepted on mer ipse dixit.

7. The delay in this case is enormous and has not been properly explained. The bona fides has been rightly doubted by the court below and sufficient cause has not been shown or established.

8. The recent decision of the Apex Court in *Lanka Venkateswarlu (D) by Lrs. - vs. - State of A.P. and others* reported in 2011- 3- L.W. 26 has clearly held that all discretionary powers, especially, judicial powers, have to be exercised within reasonable bounds known to law. The Court does not enjoy unlimited and unbridled discretionary power. It also holds that “liberal approach”, “justice oriented approach”, “substantial justice” cannot be employed to jettison the substantial law of limitation, especially, in cases where the Court concludes that there is no justification for the delay. Paragraphs 17 and 26 which is relevant is extracted hereunder:- “ (17) Even though the Courts have power to condone the delay, it cannot be condoned without any justification. Such an approach would result in rendering the provisions contained in the Limitation Act redundant and inoperative.” “(26) We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as “liberal approach”, “ Justice oriented approach”, “ substantial justice” cannot be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering

applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers. “ The present case falls outside the Court's exercise of discretionary power.

9. On going through the factual aspects of the case as mentioned above and the finding of the Court below, this Court finds no good reason to interfere with the order of the Court below. It does not call for any interference.

10. Finding no merits, this Civil Revision Petition is dismissed at the admission stage. Consequently, connected miscellaneous petition is closed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com