

Dr. Y. LAKSHMANA RAO
REGISTRAR GENERAL



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ROC No. 591/SO/2023

Dated 16.10.2023

To

All the Unit Heads in Andhra Pradesh.

Sir/Madam,

Check & Put up: High Court of Andhra Pradesh – Order dated 24.02.2023 passed in Civil Miscellaneous Appeal No. 979 of 2015 by the Hon'ble High Court of Andhra Pradesh – Forwarded – Reg.

Ref: Order dated 24.02.2023 passed in Civil Miscellaneous Appeal No. 979 of 2015 by the Hon'ble High Court of Andhra Pradesh.

Adverting to the subject and reference cited, as directed, I am forwarding herewith the copy of Order dated 24.02.2023 passed in Civil Miscellaneous Appeal No. 979 of 2015 by the Hon'ble High Court of Andhra Pradesh, for compliance.

Further, I also request you to communicate the aforesaid Judgment to all the Judicial Officers in your Unit and to the Presiding Officers of Labour Courts/Tribunals in the District working under the control of the High Court, for compliance.

Yours sincerely,
Y. Lakshmana Rao
16/10/2023
REGISTRAR GENERAL

Encl: As stated.

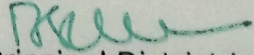
R. Nu: 6478
20/10/23

District Court, Vizianagaram,
Date: 25.10.2023.

Copy communicated to all the Judicial Officers in the District with a request to download the copy of the letter in ROC No.591/SO/2023 dt.16.10.2023 of the Honourable High Court of Andhra Pradesh, Amaravathi, along with copy of Order dated 24.02.2023 passed in Civil Miscellaneous Appeal No. 979 of 2015 by the Honourable High Court of andhra Pradesh, from **districts.ecourts.gov.in/vizianagaram**, for information and compliance.

Copy communicated to Senior Superintendents (HC, CN), Superintendents (CS, RK, Translator), District Court, Vizianagaram.

Copy communicated to System officer, Ecourt Project, District Court, Vizianagaram with a direction to upload the above ROC and Judgment in District Court website.


Principal District Judge,
Vizianagaram.

o/c

.Dis.No. 4442 Date: 26.10.2023.

1
IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

C.M.A. No.979 of 2015

Between:

M/s Kiran Krishna Real Estate & Constructions (P) Limited,
D.No.5-40-13A, T.P.T Colony, Seethamdharma,
Visakhapatnam

.... Petitioner

And

P.V.A. Prasad, S/o P.V. Ratnam.

.... Respondent.

Date of Order pronounced on : 24.02.2023

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the judgments?
2. Whether the copies of judgment may be marked: Yes/No
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy : Yes/No
of the Judgment?

VENKATA JYOTHIRMAI PRATAPA, J

***HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

+ C.M.A No.979 of 2015

% 24.02.2023

M/s Kiran Krishna Real Estate & Constructions (P) Limited,
D.No.5-40-13A, T.P.T Colony, Seethamdharma,
Visakhapatnam.

.... Petitioner

And

\$ P.V.A. Prasad, S/o P.V. Ratnam.

....Respondent.

! Counsel for the Petitioner : Sri Rajesh Maddy,

Counsel for the Respondent: ---.

<Gist :

>Head Note:

? Cases referred:

- 1) 73 (1998) DLT 304
- 2) AIR 1964 SC 215
- 3) 2000 AIHC (2694) (AP)
- 4) II (2005) ACC 137
- 5) C.R.P.No.3888 of 2019, dt. 14.10.2022
- 6) (2010) 15 SCC 454

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

C.M.A.No.979 of 2015

JUDGMENT:-

1. The unsuccessful petitioner/plaintiff filed the present C.M.A. impugning the order dated 05.08.2015 in I.A.No.2017 of 2005 in O.S.No.1421 of 2003 on the file of the learned Principal Senior Civil Judge at Visakhapatnam, wherein a petition filed for restoration of suit that was dismissed for default, was dismissed. The Respondent herein is the Respondent/Defendant in the O.S.

Procedural History:

2. The contention of the plaintiff in I.A.No.2017 of 2005 (hereinafter 'restoration petition') is that he suffered from viral fever during 27.09.2005 to 30.09.2005, as such he could not appear before the Court on 29.09.2005. In addition, his nephew by name V. Avinash was also admitted for surgery in Seven Hills Hospital, Visakhapatnam. He further submits that his absence was neither wanton nor deliberate, therefore his prayer to restore the suit should be allowed.

3. Refuting the petitioner's case, the respondent/defendant filed counter to the I.A. to the effect that since a plea that suit is

barred by limitation was taken, the plaintiff avoided to attend and ultimately got the suit dismissed for default. He further contended that no document is filed to show about the ill health of the plaintiff and the suit is indeed a counter-blast to their claim before District Consumer Forum, West Godavari District, Eluru. Therefore, sought for dismissal of the petition.

4. After hearing both sides, the learned trial Judge vide an order dated 05.08.2015, dismissed the petition on the ground that petitioner failed to explain sufficient cause in not appearing before the Court on the date of hearing of suit and further observed that no medical certificate was filed in support that he was suffering from viral fever and his relative was at hospital. Aggrieved by the dismissal order, the petitioner/plaintiff preferred the C.M.A.

5. Heard the learned counsel for the Appellant. None appeared for the Respondent to submit their objections, despite service of notice. Needless to say, irrespective of objections or defense taken by the other side, it is the duty of the Court to examine the sustainability of the impugned Order under law.

6. Learned counsel for the appellant in elaboration to what was stated in the Grounds of Appeal contended that the learned trial judge failed to appreciate that the restoration petition is filed within time along with the evidence affidavit, indicating his readiness to commence the trial. He further contended that the learned trial judge erroneously dismissed the petition by observing that the petitioner has not filed any evidence to show that he suffered from viral fever.

Point for Determination:

7. The point for determination in this C.MA. is-

Whether the Order under challenge is sustainable under law or it warrants any interference of this Court in this Appeal?

Legal Analysis & Findings:

8. Before going to the merits of the case, it would be relevant to extract Order IX Rule 9 of the Code of Civil Procedure (C.P.C.):

ORDER IX- Appearance of parties and consequence of non-appearance

Rule 9. Decree against plaintiff by default bars fresh suit:—

(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

9. Order IX of C.P.C. deals with “*Appearance of parties and consequence of non-appearance.*” Order IX Rule 9 of the C.P.C. provides for restoration of suits dismissed under Order IX Rule 8 for non-appearance. When once a suit is dismissed wholly or partly, the plaintiff is precluded from bringing a fresh suit in respect of the same cause of action, however Rule 9 permits for filing of an application to set aside the dismissal order. As seen from the rule, for an application for the restoration of the suit to be allowed, “sufficient cause” must be shown to the satisfaction

of the court for non-appearance, when the suit was called. However, restoration application cannot be ordered unless notice of application has been served on the opposite party.

10. The interpretation of “sufficient cause” is of relevance at this juncture. There exists no straitjacket formula for “sufficient cause.” The Hon’ble Delhi High Court in *Road Master Cycle Limited v. Smt.Sushma Nangia*¹ defined “sufficient cause” at para 7 as follows;

“...Any cause, which prevents a person approaching the Court within time, is sufficient. In doing so, it is a test of reasonable man in normal circumstances which has to be applied. The test whether or not a 'cause' is 'sufficient' is to see whether it could have been avoided by the party by exercise of due care and attention...”

Whereas, a three Judge Bench of the Hon’ble Apex Court in *Union of India v. Ram Charan (deceased) through his LRs*² observed that an illustrative list of facts or circumstances constituting “sufficient cause” would hamper the free exercise of the courts discretion in the interests of justice.

¹ 73 (1998) DLT 304

² AIR 1964 SC 215

11. The satisfaction of the court on the “sufficient cause” is the crux in deciding restoration applications under Order IX Rule 9. It is reiterated as a principle of law that Order IX Rule 9 being procedural in nature, “sufficient cause” should receive a liberal consideration as an elastic expression in order to do substantial justice rather than being struck on technical rigidities.

12. In the present case, the suit is filed for recovery of amount. When the matter came up for trial, the plaintiff on a particular date of hearing failed to appear before the Court. The record shows that the application under Order IX Rule 9 of CPC filed by the plaintiff within a period of one month. Furthermore, the plaintiff filed evidence affidavit along with the petition. The contention of the defendant is that since they have taken a plea in the written statement that the suit claim is barred by limitation, the plaintiff avoided to pursue the suit is not tenable since the trial is not yet commenced and the plea is not examined by the trial Court.

13. It is the contention of the petitioner that he suffered from viral fever for three days and that his nephew was admitted in a

hospital, therefore, he could not appear before the Court. In a case where the party approaches the Court immediately within the statutory time prescribed for recourse, the discretion needs to be exercised in his favour, provided the absence was not with any malafide intention.

14. In the context of Order IX Rule 9, a Co-ordinate Bench of this Hon'ble Court in *Mohd. Khaja v. C. Nand Kumar*,³ observed that when substantial rights are involved, it is expedient to decide the matter on merits than to dismiss for default. Similarly, the Hon'ble High Court of Madhya Pradesh in *Samotibai v. Dhannalal & Ors.*⁴, opined that when the non-appearance does not smack mala fide and does not seem to be false or frivolous, court should enable the claimant to substantiate his case.

15. Furthermore, sufficient cause for non-appearance refers to the date on which the absence was made a ground for dismissal of the suit cannot be stretched to rely upon other circumstances anterior in time. The impugned order is clear on that point. The learned trial judge observed about the non-filing of any evidence

³ 2000 AIHC (2694) (AP)

⁴ II (2005) ACC 137

to demonstrate illness. A similar point has been dealt by His Lordship Hon'ble Chief Justice of this Court in *M.Ravi v. Smt. Rajeswari*⁵ wherein no medical certificate was produced to substantiate ill-health on the day of non-appearance. It was observed by His Lordship that though premium should not be given to the negligence of litigant, a liberal approach leaning in favour of litigants who are incapacitated should be taken since dismissal of a suit would operate as a bar for initiating fresh suit on the same cause of action.

16. In the present case, the reason for absence is due to fever and sickness of his nephew. The restoration petition was filed immediately along with the evidence affidavit and that itself shows the readiness of the plaintiff to commence the trial. This court is of the view that the learned trial judge had adopted a technical, narrow, and pedantic view on simple ground that the reason is not supported by medical record. It is highly unlikely to expect a medical record for each illness which incapacitate the party from appearing on a given day, particularly when bona fide of the party is exercised in due time to rectify his absence.

⁵ C.R.P.No.3888 of 2019, Dt:14.10.2022

17. In fact, the Hon'ble Apex Court in *Kamla Bai v. Harishankar Arora*⁶, held that when non-appearance of the plaintiff is only for one day and when the defendant doesn't appear in the appeal against the dismissal of the restoration application under Order IX Rule 9, the suit must be restored to original file. The factual matrix of the present case squarely fit in as the plaintiff in the subject suit has also not appeared on a given day i.e., on 29.09.2005.

18. Absence of a party in the case on the date of hearing may lead to the delay in disposal of the matter, but the other side can be compensated by adequate cost and the lis can be decided on merits to meet the ends of justice. However, this Court by this view is not giving a free ticket to the negligence and lethargic attitude of the parties who do not pursue their matters as per the timelines.

19. Before parting with the case, it is interesting to note that the suit is of the year 2003, it was dismissed for default on 29.09.2005, the restoration petition under Order IX Rule 9, vide I.A.No.2017 of 2005 was filed within 30 days' time limit. The restoration

⁶ (2010) 15 SCC 454

petition vide impugned order was dismissed on 05.08.2015, i.e., nearly after a period of 10 years. For the absence of the plaintiff for one day, the litigation stood stalled for a period of 10 years in the trial court thereby forcing the plaintiff to carry the matter in an Appeal before this Court. Nevertheless, it took 18 years to set the clock right for being absent on one day. This Court has serious concern about the difficulty of the parties to adduce their evidence apart from securing the presence of witnesses proving their respective contentions as much water might have flown down the bridge in these two decades that passed from the institution of the suit.

20. At this juncture, in addition to the Circular of this Hon'ble Court vide R.O.C.No.49/O.P.Cell/2019 dated 16.07.2019, this Court considers it desirable to lay down certain guidelines to avoid delay in disposal of the petitions filed for restoration of matters and setting aside the ex-parte decrees;-

- i. At Numbering Stage- Such petitions shall be checked and numbered within a period of three (3) days.
- ii. At Notice Stage- After registering the petition, steps are to be expedited for serving the notice on the other side by

availing the permissible modes as per the C.P.C. and for enabling the respondent to the respond to the petition.

- iii. At Ripened Stage- When the matter gets ripened for hearing, endeavor of the concerned Court shall be to dispose the same as expeditiously as possible, unless there are other warranting circumstances recorded in writing.*
- iv. The concerned Judge shall bestow their attention in identifying such pending I.As., if any on their Board and dispose of the same by giving priority to the older ones.*
- v. In case of fresh petitions, endeavor of the concerned court shall be to dispose of the petitions within (3) months from the date of filing as instructed vide Circular dated 16.07.2019.*
- vi. The Unit Heads are directed to closely monitor the filing and disposal of the petitions referred supra through Arrears Committee to avoid repetition of the instances of inordinate delays in disposal.*
- vii. The Unit Heads are directed to furnish the consolidated statements, every fortnight, as per the proforma indicated in the Circular dated 16.07.2019.*

21. In view of the aforementioned premises, order impugned brooks interference of this Court for its hyper-technical approach and the appeal is liable to be allowed on payment of costs.

22. Accordingly, this Civil Miscellaneous Appeal is allowed on payment of costs of Rs.1000/- (Rupees One Thousand only) to the High Court Employees Association, High Court of Andhra Pradesh. The learned Principal Senior Civil Judge at Visakhapatnam is directed to take the suit on file and dispose of the suit within a period of (6) Six months from the date of receipt of a copy of this Order. Miscellaneous petitions pending, if any, in this case shall stand closed.

23. Learned Registrar General of this Court is directed to forward a copy of this judgment to all the Principal District Judges in the State of Andhra Pradesh, who shall ensure the circulation of the same to all the courts in their respective units for compliance of the guidelines issued. A copy be also forwarded to the learned Director, Andhra Pradesh Judicial Academy for sensitization of the trainee Judges.

VENKATA JYOTHIRMAI PRATAPA, J

Date : 24.02.2023

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HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

C.M.A.No.979 of 2015

Date :24.02.2023

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