

SRI VEERA HANUMAN RICE AND FLOUR MILL AND ANR. A

v.

STATE BANK OF INDIA, RAMACHANDRAPURAM, A.P.

APRIL 24, 2000

[S. SAGHIR AHMAD AND DORAISWAMY RAJU, JJ.] B

*Limitation Act, 1963 :*

*S. 5—Preliminary decree in suit for sale—Default by judgment-debtor—Decree-holder ought to have filed application under Order 34 Rule 5 CPC for passing final decree on or before 31.12.1991 but filed the same on 27.7.1994 alongwith an application under s. 5 of the Act—Application dismissed—Revision before High Court—Contention raised by judgment-debtor that delay of 714 days was not properly explained, as necessary proof of the claim of Legal Advisor as also of Advocate that they were not well during the relevant period was wanting and during that period the Advocate was regularly appearing in the Court—High Court setting aside the order of lower court and allowing application for condonation of delay—Held, though bank being a Government Undertaking and a huge sum of public money involved, necessarily some indulgence may be shown in considering claims of parties, but it is no justification to omit even considering specific and relevant factual contention of judgment-debtor regarding appearance of lawyer of the bank during the relevant period—Matter remitted to High Court which would restore the revision on its file, consider the contention of judgment-debtor and decide the matter afresh—Code of Civil Procedure, 1908—Order 34, Rule 5.* C  
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2896 of 2000. F

From the Judgment and Order dated 29.6.99 of the Andhra Pradesh High Court in C.R.P. No. 610 of 1998.

M.N. Rao, G. Sridhar, Thiru Changu and Y. Raja Gopala Rao for the Appellants. G

Anil Kumar Sangal for the Respondents.

The following Order of the Court was delivered :

Special leave granted. H

A The plaintiff-Bank filed a suit against the defendants (appellants herein) in O.S. No. 93 of 1987 on the file of the Senior Civil Judge, Ramachandrapuram, Andhra Pradesh, and obtained a preliminary decree on 31.12.87 for a sum of Rs. 70,087.75. The decree holder ought to have filed an application for passing a final decree in case of default on the part of the judgment-debtors on or before 31.12.91, but actually filed an application on 27.7.94 for passing a final decree invoking Order 34 Rule 5, CPC, along with an application under Section 5 of the Limitation Act, 1963 seeking for the condonation of delay of 714 days. It may be pointed out at this stage that on the filing of the suit, the judgment-debtors filed an Insolvency Petition in I.P. No. 6/87 and this came to be dismissed on 20.11.92.

C While dealing with the application for condonation of delay under Section 5 of the Limitation Act made in I.A. No. 1079/94, the learned Subordinate Judge dismissed the same on the view that no sufficient cause had been shown to condone the delay. Aggrieved, the Bank pursued the matter before the High Court in a revision C.R.P. No. 610/98. A learned Single Judge of the Andhra Pradesh High Court, while setting aside the order of the Court below, allowed the application for condonation of delay subject to payment of a sum of Rs. 2,000 as costs, which ultimately the counsel for the appellants in the Court below refused to receive, but came to be deposited in Court under orders of the learned Judge. The learned Single Judge was of the view that the court below had taken not only a strict but hypertechnical view in the matter. It is in such circumstances the judgment-debtors filed the above appeal. Notice has been ordered and the respondent-Bank has filed a counter affidavit to which a rejoinder has also been filed by the appellants.

F Shri M.N. Rao, learned senior counsel appearing for the appellants, strenuously contended that the High Court failed to properly apply its mind to all the contentions raised by the appellants and the discretion exercised by the learned Judge in the High Court in favour of the plaintiff-Bank was not in accordance with law. It was contended that though Law of Limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so ordains and the Courts cannot merely on equitable grounds, purport to extend the period of limitation prescribed in law. All the more so, when it has the effect of undoing substantial rights acquired by the other party. Argued the learned counsel further that not only there had been no proper explanation for the delay but the necessary proof of the claim that the Legal Advisor and the Advocate of the Bank was not well during that period was

wanting, inspite of the specific plea raised by the appellants that the Bank's lawyer, during the very period for which the delay occurred, the condonation of which was sought, was regularly appearing in the Court, was not specifically considered objectively and finding recorded and consequently the order of the High Court is liable to be set aside.

Per contra, the learned counsel appearing for the respondent-Bank contended that the learned Judge of the High Court was right in condoning the delay when he was satisfied about the sufficiency of the cause and that in any event the delay in moving the Court for passing of the final decree was on account of the *bona fide* and mistaken impression of the law of the time by which they can move, and consequently no exception could be taken to the well merited order of the learned Single of the High Court.

We have carefully considered the submissions of the learned counsel appearing on either side. The respondent-Bank being a Government Undertaking and since a huge sum of public money is involved, necessarily some indulgence may be shown in considering claims of parties. But, it is no justification to omit even considering the specific and relevant factual contention urged by the appellants that the Bank's lawyer was really appearing in Court regularly during those days. Since there has been such a serious omission on the part of the High Court in considering this vital aspect, we are of the view that the order of the learned Single Judge made in C.R.P. No. 610/98 could not be sustained but should be set aside and the proceedings remitted to the High Court with a direction to restore the revision on its file and consider the contention of the appellants made with reference to the appearance in Court of the Legal Advisor and the Advocate of the Bank in other cases, and thereafter decide the issue afresh in accordance with law and pass appropriate orders on merit as the circumstances of the case and the materials placed on record may warrant in the opinion of the High Court. The appeal is allowed accordingly and the matter shall stand remitted to the High Court on the above terms. No costs.

R.P.

Appeal allowed.