

*** THE HON'BLE SRI JUSTICE NYAPATHY VIJAY**

C.R.P.No.1180 of 2020

% 19.11.2024

Vadlapoodi Venkata Suresh Babu Petitioner

Versus

\$ Gadamsetty Kiran Kumar & 3 Others ... Respondents

! Counsel for the Petitioner : Sri P. Sridhar Reddy

! Counsel for the Respondents : Sri Sai Gangadhar Chamarty

< Gist:

> Head Note:

? Cases referred:

¹ Nil

HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**C.R.P.No.1180 of 2020**

% 19.11.2024

Vadlapoodi Venkata Suresh Babu Petitioner

Versus

\$ Gadamsetty Kiran Kumar & 3 Others ... Respondents

DATE OF ORDER PRONOUNCED: 20.11.2024

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE NYAPATHY VIJAY

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|---|--------|
| 1. Whether Reporters of Local Newspapers may be allowed to see the Order? | Yes/No |
| 2. Whether the copies of Order may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Your Lordship wish to see the Fair Copy of the Order? | Yes/No |

NYAPATHY VIJAY, J

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CIVIL REVISION PETITION No.1180 of 2020

ORDER:

1. The present Civil Revision Petition is filed questioning the Order dated 21.10.2020 in I.A.No.121 of 2020 in O.S.No.14 of 2014 in C.F.No.1569 of 2019 passed by the I Additional District Judge, Nellore, SPSR Nellore District.

2. The Petitioners are the Defendants. The suit O.S.No.14 of 2014 was filed by the Respondent/Plaintiff for recovery of money on the basis of the Mortgage Deed said to have been executed by the Petitioners/Defendants. A preliminary decree was passed *ex parte* on 23.01.2017.

3. While so, the Petitioners/Defendants filed I.A.No.121 of 2020 seeking to set-aside the *ex parte* decree under Order 9, Rule 13 CPC, wherein the reason given by the Petitioners/Defendants was that though they had engaged an Advocate, they could not file their Written Statement due to the illness of Petitioner No.3. Due to illness and old age related ailments, the Petitioner No.3 had to shift her family to Kaza Village of Guntur District for treatment. It was only when their Advocate informed about the suit being decreed *ex parte*, the present application was filed to set-aside the *ex parte* decree and this application was returned by the trial Court, as to how the petition is maintainable, since the suit was disposed of on contest.

4. As the trial Court was not taking up the applications filed by the Petitioners, A Civil Revision Petition No.282 of 2020 was filed before this Court complaining that the trial Court was not taking up the applications and only adjourning them from time to time. This Court directed the trial Court to

consider the applications of the Petitioners/Defendants and pass orders on the maintainability of the applications within a period of three (3) weeks from the date of receipt of copy of the order *vide* Order dated 27.08.2020.

5. The trial Court taking into consideration the reasons given by the Petitioners/Defendants, allowed the I.A subject to filing of the Written Statement by the Defendant Nos.2 to 4 and to deposit suit costs and also on payment of Rs.1,000/- to the Respondent/Plaintiff on or before 09.11.2020, failing which the petition stands dismissed.

6. The present Revision is filed questioning the condition to deposit suit costs. After filing the present Revision, it is submitted by both the counsel that a final decree was passed on 01.07.2024.

7. Heard Sri P.Sridhar Reddy, learned counsel for the Petitioners and Sri Sai Gangadhar Chamarty, learned counsel for the Respondent.

8. In the course of arguments, it was submitted by both the counsel that as the condition imposed in the impugned order was not complied by the Petitioners/Defendants, a final decree was passed on 01.07.2024 by the trial Court. The counsel for the Petitioners contended that the final decree should be set-aside, as a consequence, in the event this Court sets aside the condition imposed by the trial Court. The condition to deposit suit costs is erroneous and considering the precarious financial condition of the Petitioners, the same is onerous.

9. The counsel for the Respondent contended that the condition imposed by the trial Court to deposit suit costs is well within its discretion and some *bona fides* need to be established by the Petitioners/Defendants to contest the case. The counsel for the Respondent further contended that no further

orders can be passed in this Revision, as the same has been rendered infructuous, since the final decree was passed by the trial Court. It is his contention that the preliminary decree stood merged with the final decree and no cause survives for setting aside the same.

10. Having heard the respective counsel, the following issues arise for consideration:-

a) Whether the condition to deposit the suit costs in a mortgage suit is onerous and liable to be set-aside?

b) What is the impact of the passing of final decree by the trial Court on 01.07.2024 on this Revision?

11. **Issue (a)**: The suit being mortgage suit, the amounts due to the Plaintiff are secure and once the trial Court exercised its discretion to set-aside the *ex parte* decree having found some merit in the claim of the Petitioners/Defendants, ought not to have imposed a condition of depositing suit costs. The suit costs in this case are Rs.2,63,357/-. The suit costs are generally granted when the orders are passed on merits, as the legal fees incurred by the Plaintiff. The costs granted by the trial Court form part of the preliminary decree. Once the preliminary decree is set-aside, it is contradictory to impose costs, which is a part of the decree as a condition precedent to set-aside the *ex parte* decree.

12. The other scenario would be that even if the preliminary decree is passed on merits subsequently, then also costs will be imposed by the trial Court. In effect, for one preliminary decree, the Petitioner may have to pay costs twice and that would be onerous and unjust. This issue is accordingly answered.

13. **Issue (b)**: The effect of passing of the final decree does not render this revision infructuous as contended by the Respondent. If it is held that the preliminary decree merged in the final decree and no cause survives for adjudication in this Revision, that would amount to validating the onerous condition imposed while setting aside the *ex parte* decree.

14. The final decree passed can only be termed to be a '*dependent order*' and it is dependent on the outcome of this Revision. In **Varadarajan v. Muthu Venkata Pathi Reddy**¹, the application of the petitioner therein under Order 21 Rule 90 to set-aside sale was dismissed for default and sale was confirmed in favour of third party. The application to set-aside the default order was rejected by the trial Court and the High Court of Madras allowed the same on condition. Then an application was filed to vacate the confirmation of sale, and the said application was dismissed. In that context, the Judgment of Privy Council in **Shama Purshad Roy Chowdhry v. Hurro Purshad**² was referred to set aside the sale confirmation. The relevant portion of the Judgment at paragraph is extracted below:-

“The principle under which it could be said that by reason of the restoration of a petition for setting aside the sale, the confirmation made earlier would stand automatically vacated is that laid down in the Privy Council decision in ---'Shama Purshad Roy Chowdhry v. Hurro Purshad', where it was held that certain orders and decrees which are subordinate and dependent upon earlier orders and decrees could remain in force so long as the order or decree on which they were dependent are not reversed or superseded. “

¹ AIR 1953 Mad. 587 (DB)

² 10 Moo Ind App 203 (PC) (D)

*“The principle in ‘**Shama Purshad Roy Chowdhry’s case**’ has direct application in other cases for instance in the case of a preliminary and final decree where the final decree is passed and subsequently the preliminary decree is set aside in appeal, the result of which would be the final decree becomes superseded. ”*

15. In **Jakkampati Rangaiah v. Kunala Peddireddi**³, a similar view was taken by this Court referring to **Shama Purshad Roy Chowdhry’s case**. In the said case, extension of time to pay the decretal amount was refused and a final decree was passed. Questioning the refusal to extend time, an Appeal was filed. An objection was raised by the decree holder that extension cannot be granted as preliminary decree merged with final decree. The District appellate Court allowed the same and rejected the objection. Then a Revision was filed before this Court and the same was dismissed referring to **Shama Purshad Roy Chowdhry’s case**. In an un-reported Judgment of this Court speaking through Justice M. Jaganatha Rao in **Gunda Ramaswamy v. Suda China Bhadraiah & others, CRP No.3139/1983, dated 12-4-1984**, a similar view was taken.

16. This principle of a ‘*dependent order*’ was considered in **G. Ramegowda v. The Special Land Acquisition Officer, Bangalore**⁴. In that case, there was a delay in filing Appeals under the Land Acquisition Act, 1894 by the State questioning enhanced compensation awarded by the Civil Court on reference under Section 18 of the Act. The delay applications filed by the State were condoned by a Division Bench of High Court of Karnataka.

³ AIR 1957 AP 330

⁴ (1988) 2 SCC 142

17. Questioning the order condoning delays, the private parties approached Hon'ble Supreme Court. During the pendency of the Civil Appeal before Hon'ble Supreme Court, the Division Bench of Karnataka High Court passed orders on merits in the State appeals. Questioning the Appeals passed on merits, the private parties filed SLPs before the Hon'ble Supreme Court by that time.

18. While answering a similar contention as urged by the counsel for Respondent in this case, it was held at Paragraph 10 by the Hon'ble Supreme Court speaking through Hon'ble Justice M.N.Venkatachalaiah that decision in Appeal rendered on merits by the Division Bench of Karnataka High Court as dependent on the Appeal pending before Hon'ble Supreme Court regarding condonation of delay. The term '*dependent order*' was explained at Paragraph 10 thereof and the same reads as under:-

*"10. We might, perhaps, deal with the latter submission of Shri Veerappa first. The fact that the main appeals are themselves, in the meanwhile, disposed of finally on the merits by the High Court would not by itself detract from and bar the consideration of the correctness of the order condoning the delays. **This is an instance of what are called "dependent orders" and if the order excusing the delays is itself set aside in these appeals, the further exercise, made in the meanwhile, by the High Court finally disposing of the appeals, would be rendered nugatory.** The submission of Shri Veerappa is, therefore, insubstantial."*

19. The above Judgment was quoted with approval by the Honourable Supreme Court in ***Rikhabdas Nathusao Jain v. Corporation of The City Of Nagpur***⁵ at Paragraphs 32 and 33.

⁵ 2009(1) SCC 240

20. In view of the same, passing of final decree does not render this Revision infructuous and in fact makes the final decree dependent on the outcome of this Revision. As such, the Revision can be maintained.

21. In view of the above, order of the trial Court imposing condition of payment of costs is set-aside. Consequently, the preliminary decree as well as the final decree in O.S.No.14 of 2014 dated 23.01.2017 and *01.07.2024* respectively passed by the I Additional District Judge, Nellore, SPSR Nellore District are set-aside.

22. The Petitioners are directed to conclude their evidence within four (4) months from today. The trial Court shall endeavour to dispose of the suit within three (3) months thereafter. The Petitioners shall not take unnecessary adjournments.

23. With the above observations, the Civil Revision Petition is allowed. There shall be no order as to costs. As a sequel, pending applications, if any, shall stand closed.

NYAPATHY VIJAY, J

Date: 19.11.2024

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THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CIVIL REVISION PETITION No.1180 of 2020

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