

IN THE HIGH COURT FOR THE STATE OF TELANGANA

CIVIL REVISION PETITION No.5479 of 2017

Between:

G.Kaniki Reddy,  
S/o Narsappa @ Chinna Narsappa  
And four others.

... Petitioners

And

Bheem Reddy (died) by LRs.1 to 7  
Narsimha Reddy,  
S/o Late Bheem Reddy and seven others.

...Respondents

JUDGMENT PRONOUNCED ON 14.06.2024

HON'BLE JUSTICE LAXMI NARAYANA ALISHETTY

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

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JUSTICE LAXMI NARAYANA ALISHETTY

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> Head Note:

! Counsel for the Petitioners: Sri J.Suresh Babu

^ Counsel for Respondents: Sri Karnam Ramesh

? Cases Referred:

1. AIR 2009 Kerala 9
2. 1959 SCC OnLine Kar 25
3. MANU/MH/0489/1988
4. 1991 SCC Online Petitioner&H 202
5. 1960 SCC Online SC 149
6. AIR 1975 Bom 257
7. 1973 SCC Online Cal 76
8. 2010(4) ALT 272 (S.B.)\
9. (1999)8 SCC 315
- 10.(2001) 7 SCC 573

**HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**CIVIL REVISION PETITION No.5479 of 2017ORDER:

Heard Sri J.Suresh Babu, learned counsel for the revision petitioners, and Sri Karnam Ramesh, learned counsel for the respondents. Perused the entire material available on record.

2. This Revision Petition is filed challenging the order, dated 04.12.2009, passed by the Senior Civil Judge, Narayanpet in CFR.No.542 of 2007 in unregistered E.P., whereby the EP was dismissed at the threshold.

3. The revision petitioners are the decree holders/plaintiffs and the respondents are the judgment debtors/defendants.

4. The facts of the case, if narrated in a narrow compass, which are necessary for disposal of this Revision Petition, are that the suit in O.S.No.132 of 1992 filed for declaration of title and recovery of possession of the suit schedule property was decreed *ex parte* on 23.09.1994. Subsequently, on 16.11.2007, the decree holders filed E.P. under Order XXI Rule 35 CPC seeking execution of the

decree passed in the said O.S. i.e., for delivery of the suit schedule property to them.

4.1. The office of the Executing Court took an objection as to the maintainability of the said EP as the same was filed after 12 years from the date of passing of the judgment in the said O.S. Thereupon, as can be seen from the impugned order, lengthy arguments were advanced by the learned counsels for the decree holders as well as the judgments debtors and the trial Court, upon considering the limitation prescribed under Article 136 of the Limitation Act, 1963, observed that the decree holders ought to have filed Execution Petition within a period of 12 years from the date of passing of the judgment i.e., on or before 24.09.2006, but they have filed Execution Petition on 16.11.2007 and accordingly, held that the Execution Petition is not maintainable and dismissed the same at the threshold. Hence, the present Revision Petition.

5. Learned counsel for the petitioners/decree holders contended that though the judgment was pronounced on 23.09.1994, the decree in the said suit was signed by the Presiding Officer on 12.06.2007 and therefore, the limitation starts from 12.06.2007;

that the Executing Court went wrong in computing the period of limitation from 23.09.1994 and hence, he prayed to allow this Revision Petition.

6. Learned counsel for the petitioners relied upon the following judgments:-

1. *Sasi v. R.S. Devadas*<sup>1</sup>
2. *Chanabasappa v. Narasing Rao Gunde Rao*<sup>2</sup>
3. *Bharat Chandulal Nanavati & Ors. v. United Commercial Bank*<sup>3</sup>
4. *Harbant Kaur v. Amar Singh & Ors*<sup>4</sup>
5. *Jagat Dhish Bhargava v. Jawahar Lal Bhargava*<sup>5</sup>
6. *Subash Ganpatrao Buty v. Maroti*<sup>6</sup>
7. *Ram Krishna Tarafdar v. Nemai Krishna Tarafdar*<sup>7</sup>
8. *Udayagiri Ramija Begum & Anr. v. Mulla Ali Baig & Anr*<sup>8</sup>

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<sup>1</sup> AIR 2009 Kerala 9

<sup>2</sup> 1959 SCC OnLine Kar 25

<sup>3</sup> MANU/MH/0489/1988

<sup>4</sup> 1991 SCC Online P&H 202

<sup>5</sup> 1960 SCC OnLine SC 149

<sup>6</sup> AIR 1975 Bom 257

<sup>7</sup> 1973 SCC OnLine Cal 76

<sup>8</sup> 2010 (4) ALT 272 (S.B.)

7. On the other hand, learned counsel for the respondents contended that the Executing Court had rightly applied the law of limitation to the facts of the present case and dismissed the EP at the threshold and therefore, the impugned order does not warrant interference by this Court.

8. In support of his contentions, learned counsel for the respondents relied upon the decisions of the Hon'ble Apex Court in *W.B. Essential Commodities Supply Corporation Vs Swadesh Agro Farming & Storage (P) Limited*<sup>9</sup> and *Hameed Joharan Vs. Abdul Salam*<sup>10</sup>.

9. This Court has given its earnest attention to the arguments advanced by learned counsel for both the parties and gone through the judgments cited by learned counsel for both the parties.

10. The undisputed facts of the case are that *ex parte* decree was passed against the defendants/respondents herein in O.S.No.132 of 1992 on 23.09.1994; that the defendant filed I.A.No.567 of 1994 seeking to set aside the *ex parte* decree; that by order, dated 09.07.1999, the said I.A. was allowed subject to certain conditions;

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<sup>9</sup> (1999) 8 SCC 315

<sup>10</sup> (2001) 7 SCC 573

that time for compliance of such condition was extended by the trial Court till 08.10.1999; that on administrative grounds, the suit was transferred to the Sub Court at Narayanpet; subsequently, I.A.No.174 of 1999 (formerly I.A.No.567 of 1994) was dismissed, vide order dated 31.03.2006; that against the said dismissal order, the defendants filed Revision Petition, vide CRP.No.2264 of 2006 before this Court on 09.06.2006; that interim stay of execution of the ex parte decree was granted by this Court in CRP and the said interim order was in force from 09.06.2006 to 20.11.2006, i.e., for a period of five (5) months eleven (11) days; and subsequently, the said CRP was dismissed by this Court, vide order dated 20.11.2006.

11. The plaintiffs filed Copy Application for obtaining certified copy of the decree in the suit on 20.11.2006; that on 24.11.2006, the office returned the said Copy Application with an endorsement that the decree in the said suit was not available in record when it was received from the Munsif Court; that subsequently, the decree was signed and engrossed on 12.06.2007 and it was delivered to

the plaintiffs on 14.06.2007; and that the EP for execution of the decree was filed by the plaintiffs on 16.11.2007.

12. The trial Court dismissed the EP filed by the plaintiff at the threshold observing that the E.P. was filed after twelve (12) years from the date of passing of the judgment in the said suit.

13. Now, it has to be seen whether the E.P. was filed within the period of limitation as stipulated under the Limitation Act.

14. For better appreciation of the period of limitation, it is useful to reproduce Article-136 of the Limitation Act, 1963, which reads as under:-

Description of application	Period of Limitation	Time from which period begins to run
For execution of decree(other than decree granting mandatory injunction) or order of any Civil Court	Twelve years	(When) the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods. when default in making the payment of delivery in-respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period



		of limitation.
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15. In *Chanabasappa's* case (cited supra), the High Court of Karnataka held as under:-

*“On a careful consideration of the above rulings as well as on the interpretation of the section itself it appears that the provisions of section 12(2) of the Limitation Act admit of two periods of time for exclusion:*

- (1) the period from the date of the judgment up to the date of the signing of the decree;*
- (2) the period from the date of application for, copy to the date when the copy is ready for delivery.”*

15.1. It was further held as under:-

*“... The court would have to consider whether any of the time taken up for preparation of the decree could be attributed to the default or negligence of the appellant. If the appellant is responsible for any of the time so required, then it cannot be held that period of time was properly required and that period could not be excluded in his favour under section 12(2).*

*In the case on hand, nearly three months were occupied from the date of judgment before the decree was actually signed. It is not alleged that any act on the part of the appellant was necessary for the drawing up of the decree. The whole of the period was taken by the Court*

*itself for which the party cannot be held in any way responsible.”*

16. In **Jagat Dhish Bhargava’s** case (cited supra), the Hon’ble Supreme Court at para-11 of the judgment held as under:-

*“.....The position, therefore, is that when the certified copy of the decree was filed by the respondents in the High Court on December 23, 1959, the whole of the period between the date of the application for the certified copy and the date when the decree was actually signed would have to be excluded under Section 12 sub-section (2).*

*The failure of the trial court to draw up the decree as well as the failure of the relevant department in the High Court to examine the defect in the presentation of the appeal at the initial stage have contributed substantially to the present unfortunate position. In such a case there can be no doubt that the litigant deserves to be protected against the default committed or negligence shown by the Court or its officers in the discharge of their duties.”*

17. From the above judgments, it is evident that the High Court of Karnataka in **Chanabasappa’s** case (cites supra) held that the period from the date of the judgment up to the date of the signing of the decree has to be excluded.

18. Further, in *Jagat Dhish Bhargava's* case (cited supra), the Hon'ble Supreme Court held that the litigant deserves to be protected against the default committed or negligence shown by the Court or its officers in the discharge of their duties, i.e., in drawing up the decree and accordingly, held that the whole of the period between the date of the application for the certified copy and the date when the decree was actually signed would have to be excluded under Section 12 sub-section (2).

19. In the instant case, though on 20.11.2006, the plaintiffs filed Copy Application for obtaining certified copy of decree in the suit which was decreed on 23.09.1994, the decree was got duly signed and engrossed by the office on 12.06.2007 and was delivered to the plaintiffs on 14.06.2007, i.e., after a period of 6 months 24 days.

20. Further, admittedly, the time taken for preparation of the decree could not be attributed to the default or negligence on the part of the plaintiffs. The office of the trial Court has returned the copy application filed by the plaintiffs seeking to supply certified copy of the decree on 24.11.2006 with an endorsement that the

decree was not available in record when the case was received from the Munsif Court. Therefore, there was negligence or default committed by the Court in drawing up the decree for which the plaintiffs should not be penalized and in fact, the plaintiffs deserve to be protected against such negligence or default committed by the Court or its officers in discharge of such duties.

21. Therefore, in the light of the principle laid down in *Chanabasappa's* case (cited supra), in the instant case, the period of 6 months 24 days which occurred in obtaining the decree is required to be excluded while computing the period of limitation.

22. That apart, in the case on hand, the suit was decreed ex parte was passed on 23.09.1994. However, interim stay granted by this Court in CRP.No.2264 of 2006 was in operation from 09.06.2006 to 20.11.2006 i.e., for a period of five months and eight days.

23. It is also pertinent to note that initially, the ex parte order dated 23.09.1994 passed in the suit was set aside subject to certain conditions from 09.07.1999 to 08.10.1999 i.e., for a period of three months.

24. If the aforesaid two periods are summed up, it comes to fifteen (15) months two (2) days and the said period has to be excluded while computing the period of limitation.

25. Thus, in all a period of 15 months 2 days has to be excluded while computing the period of limitation for filing the Execution Petition.

26. Undisputedly, the suit was decree ex parte on 23.09.1994 and therefore, as per Article 136 of the Limitation Act, the Execution Petition should have been filed on or before 23.09.2006. But, in the instant case, the E.P. was filed on 16.11.2007.

27. However, in the light of the principle laid down by the Hon'ble Apex Court and various High Courts in the aforementioned judgments and in view of the facts and circumstances of the case and the aforesaid discussion, a period of 15 months 2 days has to be excluded in computing the limitation period. Applying the same, this Court holds that the E.P. filed by the plaintiffs is within the period of limitation and the E.P deserves to be entertained.

28. For the foregoing reasons, this Court is of the considered view that the impugned order passed by the trial Court is liable to be set aside.

29. Accordingly, the Civil Revision Petition is allowed, setting aside the order, dated 04.12.2009, passed by the Senior Civil Judge, Narayanpet in CFR.No.542 of 2007 in unregistered E.P and the trial Court is directed to register the E.P. and dispose the same in accordance with law as expeditiously as possible. No costs.

30. Pending miscellaneous applications, if any, shall stand closed.

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**JUSTICE LAXMI NARAYANA ALISHETTY**

Date:14.06.2024  
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