

***THE HON'BLE SRI JUSTICE SUJOY PAUL**

**+ CIVIL REVISION PETITION Nos.1391, 1402, 1404, 1493, 1507
and 1521 of 2024**

%16-07-2024

#Ahmed Ali Khan & others.

...Petitioners

vs.

\$Tayab Khatoon and others.

... Respondents

!Counsel for the Petitioners : Sri Ali Farooque.

^Counsel for Respondent No.1: Sri Prabhakar Sripada, Senior Counsel
representing Sri Gundapu Giridhar.

<Gist :

>Head Note :

? Cases referred

1. 1964 AIR (Mysore) 293
2. 2008 AIR SCW 6025
3. AIR 2002 SUPREME COURT 1201
4. 2004 AIR (Bombay) 359
5. (1993) 4 SCC 41
6. (2010) 9 SCC 385
7. 2010 (3) ALD 358
8. 2008 (1) ALD 253
9. 2003 (3) SCC 485
10. 2003 (2) SCC 111
11. (2010) 8 SCC 329

IN THE HIGH COURT FOR THE STATE OF TELANGANA**HYDERABAD**

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**CIVIL REVISION PETITION Nos.1391, 1402, 1404, 1493, 1507 and
1521 of 2024**

Between:

Ahmed Ali Khan & others.

...Petitioners

vs.

Tayaba Khatoon & others.

... Respondents

JUDGMENT PRONOUNCED ON: 16.07.2024

THE HON'BLE SRI JUSTICE SUJOY PAUL

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

SUJOY PAUL, J

THE HONOURABLE SRI JUSTICE SUJOY PAUL**CIVIL REVISION PETITION Nos.1391, 1402, 1404, 1493,
1507 and 1521 of 2024****COMMON ORDER:**

These batch of petitions filed under Article 227 of the Constitution contains a singular legal question and therefore, on the joint request of the parties, the matters were analogously heard and decided by this common order.

2. C.R.P.Nos.1391, 1402 and 1404 of 2024 are directed against common order dated 08.02.2024 passed in I.A.Nos.1264, 1265 and 1263 of 2023 in O.S.No.876 of 2017 respectively and C.R.P.Nos.1493, 1507 and 1521 of 2024 are directed against common order dated 08.02.2024 passed in I.A.Nos.1266, 1268 and 1267 of 2023 in I.A.No.514 of 2017 in O.S.No.876 of 2017 respectively, both on the file of XVII Additional Senior Civil Judge, City Civil Court at Hyderabad.

3. The singular question deserves consideration is that when admittedly on the date of institution of suit, the sole defendant was not alive, but legal representatives of deceased defendant contested the matter to a great extent, whether the plaintiff's

application for substitution of legal representatives, condone delay and setting aside abatement were entertainable?

Factual backdrop:-

4. The admitted facts between the parties are that the plaintiff instituted a suit in O.S.No.876 of 2017 for eviction and recovery of arrears of rent. After receipt of summons, vakalath has been filed on behalf of respondent/defendant. During the course of proceedings, the written statement and counter affidavits were also filed. Further, three witnesses i.e., P.Ws.1 to 3 also entered into witness box on behalf of plaintiff.

5. The only defendant in O.S.No.876 of 2017 was Mohd. Masood Ali Khan. The Chief Affidavit of one Maqsood Ali, S/o. Mohd. Masood Ali Khan/main defendant was filed on 21.07.2023. On 11.08.2023, the learned counsel for Mohd. Masood Ali Khan filed a memo and for the first time informed that the sole defendant in the suit died on 05.03.1989.

6. The plaintiff after coming to know about the death of the sole defendant, preferred the aforesaid applications for substitution of legal representatives etc., and clearly stated that the plaintiff was

not aware about the death of Mohd. Masood Ali Khan and therefore, the delay in filing the applications for substitution of legal representatives may be condoned and abatement may be set aside.

7. The legal representatives filed reply and prayed for rejection of the above interlocutory applications.

8. The Court below after hearing both the parties passed the impugned common orders dated 08.02.2024 and allowed all the aforesaid applications by holding that the plaintiff was not aware about the death of the main defendant and came to know about it only when the aforesaid memo dated 11.08.2023 was filed. Thus, after considering certain legal pronouncements, all the applications were allowed by the Court below. The Court below gave a specific finding that the factum of death of original defendant was not known to the plaintiff. Had it been known, the plaintiff would have filed the suit against the legal representatives or else would have filed appropriate application for substitution of legal representatives with quite promptitude. Since plaintiff gathered knowledge about the death of the sole defendant only on 11.08.2023, the delay deserves to be condoned.

Contention of the petitioners/legal representatives:-

9. The bone of contention of the learned counsel for the petitioners/legal representatives is that on the date of institution of the suit itself, the sole defendant was not alive. Thus, suit proceedings itself became a nullity in the eyes of law. Therefore, the question of substitution of legal representatives, condoning the delay and setting aside the abatement does not arise. Learned counsel for the legal representatives/petitioners herein fairly submitted that although, inadvertently the legal representatives contested the suit for seven years, filed written statement, additional written statement etc., all that will not make much difference because the suit itself is a nullity and not maintainable. It is argued that the name of main defendant was Mohd. Masood Ali Khan, whereas, one of the legal representative, who is son of sole defendant is having similar name i.e., Maqsood Ali Khan. Therefore, under confusion, he contested the matter for almost seven years and later realized that his father was the main and sole defendant in O.S.No.876 of 2017.

10. In order to bolster the submission that suit against dead person is a nullity, reliance is placed on judgment of Mysore High

Court in the case of **C. Muttu vs. Bharath Match Works, Sivakasi**¹. In the said judgment, the following judgments were also considered: (1) *Savitramma vs. Nanjundappa* {25 Mys LJ 113}, (2) *Mohun Chunder Koondoo vs. Azeem Gazee Chowkeedar* {12 Suth W.R. 45: 3 Beng LR AC 233}, (3) *Arunachalam Chettiar*, 30 IND Cas 679 {AIR 1916 Madras 440}, (4) *Rasa Goundan v. Pichamuthu Pillai*, {42 IND Cas 539: AIR 1918 Madras 794 (1)}, (5) *Rampratab Brijuohandas vs. Qowrishankar Kashiram* {85 Ind Cas 464: AIR 1924 Bom 109}, (6) *Bejoy Chand Mahatap Bhadur vs. Amulya Charan Mitra* {24 Ind Cas 112: AIR 1914 Calcutta 895} (7) *Municipal Corporation of Karachi vs. Baradiojumoo Mughal* {AIR 1946 Sind 20} and (8) *Hira Lal vs. Kalinath* {AIR 1962 Supreme Court 199}. Furthermore, reliance is also placed on the judgments of the Supreme Court in the cases of **Perumon Bhagvathy Devaswom vs. Bhargavi Amma**² and **Ram Nath Sao @ Ram Nath Sahu vs. Gobardhan Sao**³ and also on the judgment of Bombay High Court in the case of **Ram Dulari vs. Maniram Ram Prasad Tiwari**⁴

¹ 1964 AIR (Mysore) 293

² 2008 AIR SCW 6025

³ AIR 2002 SUPREME COURT 1201

⁴ 2004 AIR (Bombay) 359

Stand of the plaintiff/respondent No.1:

11. The argument of the plaintiff is that when original suit was filed, the factum of death of sole defendant was not known to the plaintiff. The legal representatives contested the matter for seven long years, filed counter, additional affidavit and participated in the proceedings without any demur. It is only on 11.08.2023 by filing memo, they informed about the death of Mohd. Masood Ali Khan (sole defendant). The plaintiff promptly filed aforesaid applications. Learned counsel for the plaintiff/respondent No.1 placed reliance on the judgments of Supreme Court in the case of **Karuppaswamy vs. C. Ramamurthy**⁵ and **Jai Singh vs. Municipal Corporation of Delhi (MCD)**⁶ and on the judgments of High Court of Andhra Pradesh in the case of **Vemuri Krishna Prasad vs. Ghorpade Radha Bai**⁷ and **G. Venkataram Rao vs. Syed Abdul Rasheed**⁸. On the strength of these judgments, it is submitted that in a case of this nature, where factum of death was not known to the plaintiff and defendant participated in the proceedings with eyes opened, the legal representatives can be

⁵ (1993) 4 SCC 41

⁶ (2010) 9 SCC 385

⁷ 2010 (3) ALD 358

⁸ 2008 (1) ALD 253

permitted to be substituted when factum of death was brought to the notice of the plaintiff only on 11.08.2023.

12. The parties confined their arguments to the extent indicated above. The parties were heard at length and relevant record is perused.

FINDINGS:-

13. The judgment of Mysore High Court in the case of **C. Muttu** (cited supra) shows that the Court has considered certain previous judgments and after taking into account the provisions of the Indian Limitation Act, 1908, opined that the suit was a nullity.

14. To counter the aforesaid submission, heavy reliance is placed on the judgment of Apex Court in the case of **Karuppaswamy** (cited supra). This judgment was followed by the judgments of High Court of Andhra Pradesh in the cases of **Vemuri Krishna Prasad** and **G. Venkataram Rao** (both cited supra). The Apex Court in the judgment of **Karuppaswamy** (cited supra) compared Section 22 of the erstwhile Indian Limitation Act, 1908, with Section 21 of the Limitation Act, 1963. The relevant part reads as under:

“3. ...That provision under the Indian Limitation Act, 1908, was [Section 22](#) which read as follows : -

(1) Effect of substituting or adding new plaintiff on defendant: Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

(2) Nothing in Sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

Now under the **Limitation Act, 1963**, it is Section 21 which reads as follows :

21. Effect of substituting or adding new plaintiff or defendant. -

(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in Sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.”

(Emphasis Supplied)

15. A simple reading of para No.4 of judgment in the case of **Karuppaswamy** (cited supra) makes it clear like cloudless sky that proviso of Sub-section (1) of Section 21 of the Limitation Act, 1963, is an addition and has made all the difference. No provision like aforesaid ‘proviso’ was available in the Indian Limitation Act, 1908. It is noteworthy that the judgment of Mysore High Court in

the case of **C. Muttu** (cited supra) and other judgments considered in the said case were based on the erstwhile Indian Limitation Act, 1908, which was not pregnant with any such 'proviso' which became part of Section 21(1) of the Limitation Act, 1963. Thus, the judgment of Mysore High Court in the case of **C. Muttu** (cited supra) cannot be pressed into service. It is trite that a judgment is an authority about what has been actually decided and not about something which is logically flowing from it (see **Dr. (Mrs.) Chanchal Goyal vs. State of Rajasthan**⁹). It is equally settled that a singular different fact of subsequent case or a different legal provision may make a world of difference or may change the precedential value of the judgment (see **Bhavnagar University vs. Palitana Sugar Mill Pvt. Ltd**¹⁰).

16. After comparing the provisions of the Indian Limitation Act, 1908 and the Limitation Act, 1963, the Apex Court in the case of **Karuppaswamy** (cited supra) has poignantly held as under in para Nos.4 and 5:

"4. A comparative reading of the proviso to Sub-section (1) shows that its addition has made all the difference. It is also clear that the proviso has appeared to permit correction of errors which have been committed due to a mistake made

⁹ 2003 (3) SCC 485

¹⁰ 2003 (2) SCC 111

in good faith but only when the court permits correction of such mistake. In that event its effect is not to begin from the date on which the application for the purpose was made, or from the date of permission but from the date of the suit, deeming it to have been correctly instituted on an earlier date than the date of making the application. The proviso to Sub-section (1) of Section 21 of the Act is obviously in line with the spirit and thought of some other provisions in Part III of the Act such as Section 14 providing exclusion of time of proceeding bona fide in court without jurisdiction, when computing the period of limitation for any suit, and Section 17(1) providing a different period of Limitation starting when discovering - a fraud or mistake instead of the commission of fraud or mistake. **While invoking the beneficent proviso to Sub-section (1) of Section 21 of the Act an averment that a mistake was made in good faith by impleading a dead defendant in the suit should be made and the court must on proof be satisfied that the motion to include the right defendant by substitution or addition was just and proper, the mistake having occurred in good faith. The court's satisfaction alone breaths life in the suit.**

5. ... It was rather observed that the plaintiff could have know the date of the death of the first defendant only by the counter filed to IA 265/75. Normally, if he had known about the date of death of the defendant, he would have filed the suit in the first instance against his heirs and legal representatives. The trial court has also opined that the plaintiff was ignorant as to such death and that is why he filed IA 265/75 under Order 22 Rule 4 of C.P.C. The High Court too has recorded a finding that **there was nothing to show that the plaintiff was aware of the death of the first defendant and yet knowing well about it, he would persist in filing the suit against a dead person. In conclusion,** the learned Single Judge action it clearly showed that he had acted in good faith. Thus the High Court made out a case for invoking the proviso to Sub-section (1) of Section 21 of the Act in favour of the plaintiff-respondent. Sequally, the High Court found no difficult in allowing IA 785/75 permitting change of the provision whereunder IA 265/75 was filed and in allowing IA 265/75 ordering the suit against the heirs and legal representatives of defendant No.1 to be dating bak to 14.11.74, the date on which the plaint was originally presented.”

(Emphasis Supplied)

17. The Apex Court in **Karuppaswamy** (cited supra) gave its stamp of approval to the order of High Court whereby, the applications for condoning delay, setting aside abatement and substitution of legal representatives were allowed. The High Court of Andhra Pradesh in the cases of **Vemuri Krishna Prasad** and **G. Venkataram Rao** (both cited supra) followed *ratio decidendi* of **Karuppaswamy** (cited supra).

18. In the judgment, in the case of **G. Venkataram Rao** (cited supra), the Court at para No.8 held as under:

“8. The learned Counsel representing the appellant had placed had placed strong reliance on the decisions of the Apex Court in **Karuppaswamy and Ors. v. C. Ramamurthy AIR 1993 SC 2393 SC 2324** and also *Munshi Ram v. Narsi Ram* . In the light of these decisions and also in the light of the peculiar facts and circumstances, this Court is of the considered opinion that negating the relief only on the ground that the suit was originally instituted as against a dead person, though voluntarily the person otherwise interested in the litigation came on record, and that too, when he had not chosen even to enter into the witness box, may not be just and proper. In the light of the same, inasmuch as the main ground of negating the relief being that the suit was originally instituted, may be by a bona fide mistake as against a dead person, the same in a way had been rectified since the son of the said dead person voluntarily came on record and had put in a contest by filing a written statement but had not chosen to enter into the witness box, the findings recorded by the Courts below are hereby set aside and the matter is remanded to the Court of first instance to give opportunity to both the parties to let in further evidence if they choose to do so and decide the matter in accordance with Law answering all the Issues.”

19. The factual backdrop of case of **G. Venkataram Rao** (cited supra) has a great similarity with the present matter for the singular reason that in the said case also, the suit was originally instituted against a dead person. The son of said deceased person voluntarily came on record and contested the matter by filing written statement. The suit was dismissed by the trial Court holding that it is instituted against a dead person is a nullity and the said judgment was affirmed when it was taken in the appeal before the I Additional District Judge, Ranga Reddy (Appellate Court therein). The aforesaid judgment of the trial Court treating the suit as nullity and judgment of affirmation by the Appellate Court became subject matter of challenge in the case of **G. Venkataram Rao** (cited supra). The High Court of Andhra Pradesh set aside the judgment and decree of the Courts below and allowed the Second Appeal and remanded the matter to the Court of first instance to proceed further. Thus, there is no manner of doubt that the singular question involved in this matter is no more *res integra* and curtains are finally drawn by authoritative pronouncement in the case of **Karuppaswamy** (cited supra).

20. In the case of **Perumon Bhagvathy Devaswom** (cited supra), the respondent died during the pendency of appeal. There was no notice of death to the appellant and 394 days delay was condoned by holding that appellant was unaware of death of the respondent. Hence, the appellant cannot be punished for such ignorance. This judgment does not help the present petitioners/legal representatives.

21. Similarly, in the case of **Ram Nath Sao** (cited supra), the Apex Court opined that the term 'sufficient cause' used in Section 5 of the Limitation Act, 1963, and Rule 9 of Order XXII of Civil Procedure Code must receive a liberal construction, so as to advance substantial justice when no negligence or inaction or want of *bona fide* is imputable to a party. It was poignantly held that condonation of delay of such nature is a rule and refusal must be an exception.

22. In the instant case, in the applications preferred by the plaintiff it was clearly pleaded that she came to know about the death of the sole defendant only when memo dated 11.08.2023 was filed. The delay was properly explained and mistake was *bona fide* one made in good faith by impleading a deceased

defendant in the suit originally instituted. The Court below after considering the aforesaid relevant aspects allowed all the said applications.

23. The interference by this Court under Article 227 of the Constitution can be made on limited grounds. For this purpose, the learned counsel for the plaintiff/respondent No.2 placed reliance on the judgment of Apex Court in the case of **Jai Singh** (cited supra). This is trite that interference under Article 227 of the Constitution can be made if order is passed by the Court having no jurisdiction, it suffers from palpable procedural impropriety or a patent illegality. Another view is possible, is not a ground for interference. The power cannot be exercised like 'bull in china shop' to correct the errors of judgment of Court acting within the limitation of its jurisdiction (see **Shalini Shyam Shetty vs. Rajendra Shankar Patil**¹¹).

24. In the considered opinion of this Court, the view taken by the Court below while passing the impugned common orders is in consonance with the principle laid down by the Apex Court in the case of **Karuppaswamy** (cited supra) and the judgments of High

¹¹ (2010) 8 SCC 329

Court of Andhra Pradesh in the cases of **Vemuri Krishna Prasad** and **G. Venkataram Rao** (both cited supra). Hence, these petitions are liable to be dismissed.

25. In the result, all these Civil Revision Petitions are dismissed. There shall be no order as to costs. Miscellaneous applications pending, if any, shall stand closed.

JUSTICE SUJOY PAUL

Date: 16.07.2024

Note:

L.R. marked.

B/o-GVR