LAWS(APH) 2013 3 14

HIGH COURT OF ANDHRA PRADESH

Coram :- L. NARASIMHA REDDY, J.

Decided on 2013 March 14

Writ Petition No.27956 of 2011

E. V. Ranga Reddy

VERSUS

UNION OF INDIA

Advocates:
E. MANOHAR, PONNAM ASHOK GOUD, DONTHI REDDY

[-] **Referred Judgments (6)**

MOHESHUR SING V. BENGAL GOVERNMENT[1859 7 MIA 283] [REFERRED TO]
OM PRAKASH V. AMARJIT SINGH AND ANOTHER[1988 SUPP0 SCC 780] [REFERRED TO]
SATYADHYAN GHOSAL VS. DEORAJIN DEBI [AIR 1960 SC 941] [REFERRED TO]
G RAMEGOWDA MAJOR BASAVALINGAPPA VS. SPECIAL LAND ACQUISITION OFFICER BANGALORE:SPECIAL LAND ACQUISITION OFFICER BANGALORE [AIR 1988 SC 897] [REFERRED TO]
KORES INDIA LTD VS. BANK OF MAHARASHTRA [2009 17 SCC 674] [REFERRED TO]
NAGAR PALIKA PARISHAD NAINITAL VS. NAV BHAR ALI [2011 11 SCC 672] [REFERRED TO]

[-] **Cited At (1)**

PERIYA KELU NAIR VS. KARIYAPPAU [LAWS(KER)-1962-8-22][REFERRED TO]

[-] **Referred Acts:**
CODE OF CIVIL PROCEDURE, 1908 , OR. 9R. 7 , S. 105 , S. 105(2) , S. 97
EAST PUNJAB URBAN RENT RESTRICTION ACT, 1949
MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT, 1957

Citations:
ALD 2013 4 65, ALT 2013 5 508, LAP 2013 0 67, LAWS(APH) 2013 3 14,

Expert View:

A.

The 5th respondent pleads that in case the petitioner was aggrieved by the condonation of delay/extension of time, he ought to have challenged the order of the 1st respondent in that behalf, and once the revision was disposed of, on merits, it is not open to the petitioner to challenge the order of condonation of delay__ . The two exceptions to the rule are Section 105(2) of the Code of Civil Procedure which precludes an order of remand being challenged at a subsequent stage, while challenging the decree passed pursuant to the order of remand and Section 97 of the Code where while filing an appeal from the final decree, a litigant is not entitled to question the preliminary decree on which it is based and which had earlier become final__ . Their Lordships took the view that the principle of res judicata applies, even as between two stages in the same litigation, to the extent that the trial Court or higher Court having at an earlier stage decide the matter in one way, will not allow the parties to re-agitate the matter against the subsequent stage of the proceedings__ .

B.

Repelling that contention, the Supreme Court held as under: "It is true that an order of eviction follows as a matter of course if there is non-compliance with the order determining the provisional rent but when tenant challenges the order of eviction and therein also challenges the order of fixation of provisional rent-the order of eviction, in its nature, being dependant on the correctness of the order fixing the provisional rent and there being no indication to the contrary in Section 15(1)(b) -it must be open to the appellate authority to go into the correctness of such provisional order when put in issue__ .

C.

, and the precedents thereof and held in paragraph 16 as under: "Para-16: It is clear therefore that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken could be challenged in an appeal from the final decree or order__ Repelling that contention, the Supreme Court held as under: "It is true that an order of eviction follows as a matter of course if there is non-compliance with the order determining the provisional rent but when tenant challenges the order of eviction and therein also challenges the order of fixation of provisional rent-the order of eviction, in its nature, being dependant on the correctness of the order fixing the provisional rent and there being no indication to the contrary in Section 15(1)(b)-it must be open to the appellate authority to go into the correctness of such provisional order when put in issue__

D.

On merits of the revision filed by the 5th respondent and the order passed by the 1st respondent, this Court finds that the basis for setting aside the lease granted to the petitioner is too weak. -- Hence, the writ petition is allowed, and the impugned order is set aside.

JUDGMENT / ORDER

1. The petitioner submitted an application for grant of mining lease to quarry iron ore and laterite over an extent of 500 acres of land in survey No.172 of Pagadalapalli Village, Pendlimarri Mandal, Kadapa District, before the Assistant Director of Mines and Geology, the 4th respondent herein. The application was forwarded to the Government of Andhra Pradesh, the 2nd respondent, recommending grant of mining lease, over an extent of about 500 acres. The 2nd respondent, in turn, submitted proposals before the Central Government, the 1st respondent, for approval of the mining plan. The 1st respondent accorded its approval through letter, dated 01-02-2006, and ultimately, the 2nd respondent granted mining lease in favour of the petitioner through orders in G.O.Ms.No.73, Industries and Commerce (M.III) Department, dated 13-03-2006.

2. The 5th respondent, by name M/s Kodanda Rama Minerals, filed W.P.No.14472 of 2006 before this Court, challenging the grant of mining lease in favour of the petitioner. It was pleaded that though its application is earlier in point of time, over the land in the same survey number, its plea was that an application submitted by it was pending consideration, and grant of lease in favour of the petitioner was contrary to law. This Court refused to entertain the writ petition. Through order dated 05-08-2010, this Court disposed of the writ petition, leaving it open to the 5th respondent to avail the remedy of revision. It was also mentioned that the revisional authority shall entertain the revision, without raising any objection as to limitation, if it

is presented within two months from the date of the order in the writ petition.

3. The 5th respondent filed a revision before the 1st respondent with an application to condone the delay of 210 days. It was pleaded that initially the revision was filed within the time stipulated by this Court, but proper endorsement was not made thereon.

4. The 1st respondent issued notice to the petitioner. An objection was raised on the grounds of limitation. The 1st respondent, however, condoned the delay through its order, dated 17-08-2011. Thereafter, it proceeded to decide the matter on merits. Through order, dated 27-09-2011, the 1st respondent allowed the revision and has set aside the orders in G.O.Ms.No.73, dated 13-03-2006. The matter was remanded to the 2nd respondent for fresh consideration and disposal. The petitioner challenges the said order.

5. It is pleaded that the 1st respondent committed patent illegality in extending the period stipulated by this Court for filing of revision. It is also stated that even otherwise, the 1st respondent ought to have waited after passing the order, condoning the delay, and instead, has proceeded to decide the matter on merits, almost simultaneously. The petitioner contends that there were no defects whatever in the order passed by the 2nd respondent, and the reason assigned by the 1st respondent in interfering with the G.O., is totally untenable.

6. The 5th respondent filed a counter-affidavit, opposing the writ petition. It is stated that the writ petition is not maintainable, since the order of condonation of delay has become final, and it was not challenged. According to the 5th respondent, the order passed by the 1st respondent, condoning the delay merged into the order passed in the revision, and that the aspect of condonation of delay cannot be canvassed under appeal. On merits also, the 5th respondent contends that the 1st respondent found serious defect with the orders passed by the 2nd respondent and has accordingly remanded the matter for fresh consideration, by setting aside the G.O.

7. Sri E. Manohar, learned Senior Counsel appearing for the petitioner submits that the time for filing of revision by the 5th respondent was stipulated by this Court, through its order dated 05-08-2010 in W.P.No.14472 of 2006, and in case the 5th respondent wanted extension of the time, the only course open to them was to file an application before this Court, seeking extension.

8. He contends that the 1st respondent has usurped upon the jurisdiction of this Court, when it extended the time stipulated for filing of the revision. He submits that even where the condonation of delay is within the purview of an authority, an order, upon an application, filed for that purpose, must be passed, and it is only thereafter, that the appeal or revision must be heard on merits. He further submits that the 1st respondent, in the instant case, has passed orders, condoning the delay/extending the time, and deciding the matter on merits, hardly with any time gap.

9. According to the learned Senior Counsel there is no prohibition in law for submission of an application for grant of mining lease, and the mere fact that the notification was issued during the pendency of the application, would not be a factor for not considering the application.

10. Sri Ponnam Ashok Goud, learned counsel for the 1st respondent submits that the impugned order was passed strictly in accordance with law and after giving opportunity to both sides. He contends that the 1st respondent has exercised statutory power, and as long as he has jurisdiction in the matter, he is entitled to pass orders, depending on the facts of the case.

11. Learned Government Pleader for Mines and Geology submits that the order, granting mining lease in favour of the petitioner was issued on being satisfied that it has fulfilled all the requirements in law, and that the 1st respondent has allowed the revision filed by the 5th respondent by accepting some contentions. He submits that necessary steps were taken in this regard.

12. Sri Venkat Reddy Donthi Reddy, learned counsel for the 5th respondent submits that his client presented the revision within time, and since it did not reach the 1st respondent, another set of papers was presented. He contends that, being the authority conferred with the power to entertain revision, the 1st respondent is very much competent to condone the delay in presenting the revision. He submits that the reasons pleaded by the 5th respondent were found satisfactory, and that the 1st respondent has condoned the delay. Learned counsel further submits that in case the petitioner felt aggrieved by the condonation of delay, he ought to have filed writ petition at the relevant point of time. He contends that cogent reasons were given by the 1st respondent, while allowing the revision and that the writ petition cannot be entertained, particularly when the petitioner did not choose to question the decision of the 1st respondent to extend the time for presentation of the revision.

13. At the threshold, the objection raised by the 5th respondent as to the maintainability of the writ petition needs to be considered. One of the principal grounds urged in the writ petition is that the 1st respondent has no jurisdiction or basis to condone the delay or extend the time for filing the revision. The 5th respondent pleads that in case the petitioner was aggrieved by the condonation of delay/extension of time, he ought to have challenged the order of the 1st respondent in that behalf, and once the revision was disposed of, on merits, it is not open to the petitioner to challenge the order of condonation of delay. In substance, his contention is that the condonation of delay takes place in miscellaneous application, and once the main proceedings are disposed of, the order passed in a miscellaneous application cannot be challenged.

14. The objection raised by the 5th respondent cannot be entertained for more reasons than one: Firstly, an order passed in an application for condonation of delay need not be challenged separately. An appeal or revision, which is filed with an application to condone delay, depends entirely upon the condonation of delay. Even where delay is condoned, the order passed on merits would become dependant. In other words, if a superior

forum finds that the delay ought not to have been condoned, the very pedestal on which, the appeal or revision stands disappears; and an order passed in an appeal would cease to have any independent existence.

15. In Kores (India) Limited v. Bank of Maharashtra, 2009 17 SCC 674 the Hon'ble Supreme Court held that every order passed in an interlocutory application, filed in a suit or proceeding need not be challenged, and that an aggrieved party can wait, until the final order is passed in the main proceedings. It was also observed that the only exception to this principle is the one, contained in sub-section (1) of Section 105 of C.P.C. In that case, a receiver was appointed during the pendency of a suit, and one of the grounds urged in the appeal against the decree in the suit was about legality and appointment of the receiver. Objection to this, was raised on the ground that, since no appeal was filed against the order passed in that behalf. The plea was based upon the principle of acquiescence. The Supreme Court did not agree. In its judgment, it made a reference to the judgment of the Privy Council in Moheshur Sing v. Bengal Government,1859 7 MIA 283 and observed,

"17. We are not impressed with the argument. A litigant is not bound to appeal against every interlocutory order passed against him; he can wait until the final order is passed and in appeal against that final order challenge all orders leading to the final order and affecting that decision. Stated the Privy Council in Moheshur Sing v. Bengal Govt,1859 7 MIA 283

"... We are not aware of any law or regulation prevailing in India which renders it imperative upon the suitor to appeal from every interlocutory order by which he may conceive himself aggrieved, under the penalty, if he does not so do, of forfeiting forever the benefit of the consideration of the appellate court. No authority or precedent has been cited in support of such a proposition, and we cannot conceive that anything would be more detrimental to the expeditious administration of justice than the establishment of a rule which would impose upon the suitor the necessity of so appealing; whereby on the one hand he might be harassed with endless expense and delay, and on the other inflict upon his opponent similar calamities."

18. The two exceptions to the rule are Section 105(2) of the Code of Civil Procedure which precludes an order of remand being challenged at a subsequent stage, while challenging the decree passed pursuant to the order of remand and Section 97 of the Code where while filing an appeal from the final decree, a litigant is not entitled to question the preliminary decree on which it is based and which had earlier become final.

19. Since the Code of Civil Procedure is not applicable in terms to the Supreme Court, it was held by this Court in Satyadhyan Ghosal v. Deorajin Debi, 1960 AIR (SC) 941 and in Lonankutty v. Thomman, 1976 3 SCC 528 that even Section 105 (2) of the Code, did not preclude this Court from examining the correctness of the earlier order of remand passed by the High Court in an appeal arising from the decree passed subsequent to the remand. But as regards the High Court, the order of remand would be final. (See the decisions in Nain Singh v. Koonwarjee, 1970 1 SCC 732 and Sita Ram Goel v. Sukhnandi Dayal, 1971 3 SCC 488"

16. In Satyadhyan Ghosal v. Deorajin Debi, 1960 AIR(SC) 941 the Supreme Court explained this very principle, by taking note of the judgment of the Privy Council, referred to above. Their Lordships took the view that the principle of res judicata applies, even as between two stages in the same

litigation, to the extent that the trial Court or higher Court having at an earlier stage decide the matter in one way, will not allow the parties to re-agitate the matter against the subsequent stage of the proceedings. After explaining the principle, their Lordships took note of Section 105 C.P.C., and the precedents thereof and held in paragraph 16 as under:

"Para-16: It is clear therefore that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken could be challenged in an appeal from the final decree or order. A special provision was made as regards orders of remand and that was to the effect that if an appeal lay and still the appeal was not taken the correctness of the order of remand could not later be challenged in an appeal from the final decision. If however an appeal did not lie from the order of remand the correctness thereof could be challenged by an appeal from the final decision as in the cases of other interlocutory orders. The second sub-section (of Sec.105 C.P.C.) did not apply to the Privy Council and can have no application to appeals to the Supreme Court, one reason being that no appeal lay to the Privy Council or lies to the Supreme Court against an order of remand".

17. This view was reiterated by the Hon'ble Supreme Court in the recent past, in Harjit Singh Uppal vs. Anup Bansal, 2011 11 SCC 672. That case arose under the East Punjab Urban Rent Restriction Act, 1949. In a petition filed for eviction of a tenant, an order, determining provisional rent, was passed and the tenant was to be under obligation to pay the rent. That Act itself provided that in case of non- compliance with the order, eviction would ensue, as a matter of course. Accordingly, the trial Court passed an order of eviction. When the order of eviction was challenged, a plea was raised to the effect that the order, fixing the provisional rent was not challenged. Repelling that contention, the Supreme Court held as under:

"It is true that an order of eviction follows as a matter of course if there is non-compliance with the order determining the provisional rent but when tenant challenges the order of eviction and therein also challenges the order of fixation of provisional rent-the order of eviction, in its nature, being dependant on the correctness of the order fixing the provisional rent and there being no indication to the contrary in Section 15(1)(b)-it must be open to the appellate authority to go into the correctness of such provisional order when put in issue."

18. The judgment of the Supreme Court in Om Prakash v. Amarjit Singh and another, 1988 Supp1 SCC 780 cited by the learned counsel for the 5th respondent, has no application to the facts of this case. In that case, the defendant in a suit was set ex parte. The application filed by him, under Order IX Rule 7 C.P.C., to set aside the same was dismissed. In a revision filed to the High Court, the matter was remanded for fresh consideration and disposal. After remand, the trial Court dismissed the application on technical grounds. Thereafter, the suit was decreed. In an appeal filed by the defendant, the contention as to the rejection of the application filed under Order IX Rule 7 C.P.C. was repelled. However, the decree was set aside on a different ground and the suit was remanded to the trial Court for fresh disposal. On such remand, the trial Court passed the decree, once again.

19. In the second round of litigation, the defendant raised the plea that he ought to have been given an opportunity, and in effect, assailed the order, rejecting the application filed under Order IX Rule 7. The Supreme Court held

that the defendant in that case, has permitted the order of remand by it to become final and he is not entitled to assail the order passed in an interlocutory application. Obviously, the case was covered by Section 105 C.P.C. The failure to assail an order of remand has resulted in a bar, to challenge an order passed in an interlocutory application, earlier to that. In the instant case, the facts are substantially different.

20. Sub-section (2) of Section 105 C.P.C., comes to the rescue of the petitioner.

Equally important and relevant to the issue is the judgment of the Supreme Court in G. RAMEGOWDA v. THE SPECIAL LAND ACQUISITION OFFICER, BANGALORE, 1988 AIR(SC) 897. In that case, an appeal was filed with delay, and on the delay being condoned, the appeal was numbered. The aggrieved party challenged the order, condoning the delay. Even while the proceedings, in which the order, condoning the delay was challenged; were pending, the appeal itself was disposed of. A plea was raised to the effect that once the appeal is disposed of, the challenge to the order, condoning the delay may not be tenable. Repelling the contention, the Supreme Court held,

"...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 of what are called 'dependant-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..."

21. Further, hardly there was any scope for the petitioner to challenge the order condoning delay. Soon after he condoned the delay, the 1st respondent took up the revision and the final order was passed almost within one month.

22. Coming to the merits of the matter, it is not in dispute that the 5th respondent filed W.P.No.14472 of 2006 before this Court, challenging the G.O.Ms.No.73, dated 13-03-2006, issued in favour of the petitioner, and that the said writ petition was disposed of on 05-08-2010, leaving it open to the 5th respondent to file a revision before the 1st respondent. Taking note of the fact that the limitation for filing the writ petition expired, by the time the writ petition was disposed of, this Court directed that the revision must be presented within four weeks from the date of the order. Had the revision been presented within that time, it could have been entertained without raising any objection as to the limitation. However, there was no effective presentation of the revision within that time. In case the 5th respondent wanted the time for filing the revision to be extended, the only course open to them was to approach this Court with a proper application. Instead, they filed an application before the 1st respondent for condonation of delay and the same was ordered on 17-08-2011.

23. The 1st respondent is certainly conferred with the power to condone the delay in filing a revision before it. Where, however, the High Court has, in effect, condoned the delay or extended the time for presentation of the revision and stipulated a date for presentation, the jurisdiction of the 1st respondent to deal with the matter pertaining to condonation of delay ceases

to exist. Even if he was satisfied with the reasons for not presenting the proceedings within the time stipulated by this Court, the 1st respondent has to drive the parties to the High Court, but cannot deal with that question. In condonation of delay or extending the time in such cases, the 1st respondent would be usurping the powers and jurisdiction of this Court. Therefore, a patent illegality has crept into the order dated 17-08-2011, through which, the 1st respondent has condoned the delay.

24. Once the order, condoning the delay becomes untenable, the one, passed on merits suffers a serious dent. The reason is that an adjudication of a revision, filed with delay; on merits, is always dependant upon the legality of condonation of delay, and the sustainability of the order passed in that behalf.

Just as the revision could not have been taken up for hearing, unless the delay was condoned, an order passed on merits ceases to be of any validity, if a superior forum finds that there did not exist any ground for condonation of delay, or an order passed in this regard was without jurisdiction.

25. On merits of the revision filed by the 5th respondent and the order passed by the 1st respondent, this Court finds that the basis for setting aside the lease granted to the petitioner is too weak. It was mentioned that there is discrepancy in the area mentioned in G.O.Ms.No.897, dated 20-08-1966, and the one for which the lease was granted. When the grant of mining lease is governed by the provisions of the Mines and Minerals (Development and Regulation) Act and the Rules made thereunder, setting aside a lease issued in accordance with law, just by citing a G.O., cannot be sustained.

26. Hence, the writ petition is allowed, and the impugned order is set aside. The miscellaneous petition filed in this writ petition shall also stand disposed of.

There shall be no order as to costs.