

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 23<sup>RD</sup> DAY OF NOVEMBER 2012

BEFORE

THE HON'BLE MR.JUSTICE N.ANANDA

M.F.A.NO.8560/2011

BETWEEN:

1. SRI VENKATESWARA VINAYAKA TEMPLE TRUST  
CHOLANAYAKANAHALLI  
NO.834-A, RT NAGAR  
BANGALORE-560032

(b) N BASAPPA REDDY  
MAJOR-TRUSTEE

(c) N NAGAPPA REDDY  
MAJOR-TRUSTEE

(d) CHANDRASHEKARA REDDY  
MAJOR-TRUSTEE

(e) N CHIDANAND REDDY  
MAJOR-PRESIDENT

(f) N GUDAPPA REDDY  
MAJOR-SECRETARY

(g) BABU REDDY  
MAJOR-TRUSTEE

... APPELLANTS

(BY SRI M V CHANDRASHEKARA REDDY, ADV.)

AND:

1. SRI NARASARAJU  
MAJOR  
FATHER'S NAME NOT KNOWN TO PETITIONER  
NO.357, F BLOCK, 10TH MAIN ROAD  
SAHAKARA NAGARA  
BANGALORE - 560 032

2. SMT RANJANA  
MAJOR  
FATHER'S NAME NOT KNOWN TO PETITIONER  
NO.6, 2ND MAIN ROAD  
DODDA BYRAPPA STREET  
VENKATARANGAPURA  
BANGALORE - 560 032

... RESPONDENTS

(BY SRI M D ALAVANDAR, ADV. FOR C/R-2)

MFA FILED U/O 43 RULE 1(c) OF CPC, AGAINST THE ORDER DT.17.06.2011 PASSED IN MISC.NO.925/2009 ON THE FILE OF THE 42ND ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE, DISMISSING THE PETITION FILED U/O 9 RULE 9 OF CPC, FOR RESTORATION OF O.S.NO.8646/1997 DISMISSED ON 12.11.2009.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:

### J U D G M E N T

The appellants were the plaintiffs before the Court below. They had instituted the suit for relief of permanent injunction against respondents/defendants. The suit was pending from the year 1997. Several interlocutory applications were filed and they were decided. The case was set down for plaintiffs evidence on 12.11.2009. Before that plaintiff had filed an application for amendment of plaint (IA.No.17) and it was dismissed on 11.11.2009 and the case was adjourned to 12.11.2009. On 12.11.2009, an

application was filed for adjournment of suit. The learned trial Judge taking into consideration that the suit for permanent injunction was pending from the year 1997 (for over a period of 12 years) and appellants have no impediment to adduce evidence, rejected the application and dismissed the suit for non prosecution. Therefore, they are before this Court.

2. I have heard the learned Counsel for appellants and learned Counsel for respondents.

3. The learned trial Judge has not passed an exparte order of dismissal for default. The application filed by plaintiff under Order 17 Rule 1 CPC was rejected and thereafter, suit was dismissed. Therefore, appellant could not have invoked provisions of Order 9 Rule 9 CPC.

4. In the enquiry held on the application filed under Order 9 Rule 9 CPC, PW-1, witness of petitioner, has given altogether a different version. PW-1 has not deposed that he was ill and he had been prevented from sufficient cause to appear before the Court on

12.11.2009. It is also evident from the fact that learned Counsel for plaintiffs had sought for adjournment on the ground that plaintiffs want to challenge the order made by the trial Court on the application made under Order 6 Rule 17 CPC. PW-1 has clearly admitted that there was no negotiations for settlement as reported by plaintiffs on previous hearing date.

5. The learned Counsel for appellants relying on the judgment of Supreme Court reported in AIR 2011 SC 9 (in the case of Alka Gupta vs. Narender Kumar Gupta) would submit that a suit cannot be dismissed without trial, merely because the Court feels dissatisfied with the conduct of plaintiff.

6. In the case on hand, the learned trial Judge, after dismissing the application filed under Order 6 Rule 17 CPC has dismissed the suit for non prosecution. Therefore, conduct of plaintiff on previous hearing date was not the reason for dismissal of suit for non prosecution.

7. In a decision reported in (2011) 8 SCC 249 (Ramrameshwari Devi and Others vs. Nirmala Devi and others), the Supreme Court while considering the reasons for delay in civil litigation and also effective measures to be taken to drastically change the existing system or improve the existing system has given following directions:

- A. Pleadings are the foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial Judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties. This must be done immediately after civil suits are filed.
- B. The Court should resort to discovery and production of documents and interrogatories at the earliest according to the object of the Act. If this exercise is carefully carried out, it would focus the controversies involved in the case and help the court in arriving at the truth of the matter and doing substantial justice.
- C. Imposition of actual, realistic or proper costs and/or ordering prosecution would go a long way in controlling the tendency of

introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

- D. The court must adopt realistic and pragmatic approach in granting mesne profits. The court must carefully keep in view the ground realities while granting mesne profits.
- E. The courts should be extremely careful and cautious in granting ex parte ad interim injunctions or stay orders. Ordinarily short notice should be issued to the defendants or respondents and only after hearing the parties concerned appropriate orders should be passed.
- F. Litigants who obtained ex parte ad interim injunction on the strength of false pleadings and forged documents should be adequately punished. No one should be allowed to abuse the process of the court.
- G. The principle of restitution be fully applied in a pragmatic manner in order to do real and substantial justice.

- H. Every case emanates from a human or a commercial problem and the court must make serious endeavour to resolve the problem within the framework of law and in accordance with the well settled principles of law and justice.
- I. If in a given case, ex parte injunction is granted, then the said application for grant of injunction should be disposed of on merits, after hearing both sides as expeditiously as may be possible on a priority basis and undue adjournments should be avoided.
- J. At the time of filing of the plaint, the trial court should prepare a complete schedule and fix dates for all the stages of the suit, right from filing of the written statement till pronouncement of the judgment and the courts should strictly adhere to the said dates and the said timetable as far as possible. If any interlocutory application is filed then the same be disposed of in between the said dates or hearings fixed in the said suit itself so that the date fixed for the main suit may not be disturbed.”

8. In a decision reported in (2011) 3 SCC 545, at paragraph 13, the Supreme Court has held as:

*“Sufficient cause” is an expression which has been used in a large number of statutes. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, word “sufficient” embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been “not acting diligently” or “remaining inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. (Vide Ramlal v. Rewa Coalfields Ltd., Lonand Grampanchayat v. Ramgiri Gosavi, Surinder Singh Sibia v. Vijay Kumar Sood and Oriental Aroma Chemical Industries Ltd., v. Gujarat Industrial Development Corpn.).*

9. In the case on hand, the application filed by plaintiffs under Order 6 Rule 17 CPC was dismissed. In the circumstances, plaintiffs cannot contend that dismissal of suit for non prosecution was an exparte order. Therefore, plaintiffs could not have invoked the provisions of Order 9 Rule 9 CPC. Even otherwise, plaintiffs have failed to establish sufficient cause for not adducing evidence on 12.11.2009. The learned trial Judge, on proper appreciation of evidence has rightly rejected the application filed under Order 9 Rule 9 CPC.

10. Therefore, there are no grounds to interfere with the impugned order. The appeal is accordingly dismissed.

Sd/-  
JUDGE

nas.