

HIGH COURT OF ANDHRA PRADESH

MAIN CASE: C.R.P.No.1064 OF 2023

PROCEEDING SHEET

SL. NO.	DATE	ORDER	OFFICE NOTE
02.	02.05.2023	<u>RNT, J</u> 1. Heard Sri S. Lakshminarayana Reddy, learned counsel for the petitioners. 2. The plaintiffs-petitioners filed O.S.No.748 of 2019 on the file of II Additional Junior civil Judge, Chittoor against the defendants- respondents for permanent injunction which was decreed exparte on 22.01.2020. For setting aside the exparte decree the defendants-respondents filed I.A.No. nil of 2020 under Order IX Rule 13 read with Section 151 CPC, along with I.A.No.311 of 2020 under Section 5 of the Limitation Act. The plaintiffs-petitioners filed I.A.No.221 of 2022 under Order XIX Rules 1 and 2 CPC, for permission to cross-examine the deponent of the affidavit filed along with I.A.No.311 of 2020. I.A.No.221 of 2022 has been rejected by the learned II Additional Junior Civil Judge, Chittoor by order dated 29.12.2022, against which the present civil revision petition has been filed. 3. Learned counsel for the petitioners submitted that the defendants/respondents have filed the affidavit in support of	

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		I.A.No.311 of 2020 to prove the fact in support of condonation of delay and setting aside the exparte decree. The plaintiff-petitioners under order XIX Rules 1 and 2 CPC have the right to cross examine the deponent of the affidavit to elicit the truth, that there was no sufficient cause for condonation of delay nor for their non appearance for setting aside the exparte decree. He has placed reliance in the following cases: 1. Bai Zabur Khima v Amardas Balakdas¹ 2. Sripathi Rajyalakshmi and another vs. Sripathi Seeta Mahalakshmi² 3. Veesam Mohan Reddy vs. Rebba Pedda Agaiah³ 4. K.V. Subba Rao vs The State of A.P.⁴. to contend that Order XIX Rule 2 CPC applies to applications and once the affidavit in evidence was filed upon application the petitioners should have been given the opportunity to cross examine the deponent of the affidavit.	

¹ AIR 1967 Gujarat 214

² 1974(1) ALT 30 (S.B)

³ 2008(2) ALT 329 (S.B)

⁴ AIR 1967 AP 202

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		4. Distinguishing the judgments (1) Sakalabaktula Vykunta Rao and another vs. Made Appalaswamy⁵ and (2) Jammu and Kashmir v. Bakshi Gulam Mohammad⁶ upon which the learned II Additional Junior Civil Judge, Chittoor placed reliance, Sri S. Lakshminarayana Reddy submitted that the first case related to Order XXXIX Rule 1 CPC with respect to which CPC specifically provides for disposal of such application on affidavits and the second case did not relate to the applications under Order IX Rule 13 CPC or/and Section 5 of the Limitation Act. 5. Learned counsel for the petitioners next submitted that instead of confining to I.A.No.221 of 2022, in the light of Order 19 Rules 1 and 2 CPC, the learned Junior Civil Judge, also observed that it is necessary to enquire into the matter and to dispose of the case on contest. Further, that, if it is so permitted no prejudice would be caused to the petitioners. In his submission, such observations, would prejudice the disposal of I.A.No.311 of 2020 and I.A.No. nil of 2020 on merits. 6. Matter requires consideration at depth , inter alia on the following points:	

⁵ AIR 1978 AP 103

⁶ AIR 1967 Supreme Court 122

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		a) The applicability of Order 19 Rule 1 and 2 CPC upon application under Order 9 Rule 13 CPC with application under Section 5 of Limitation Act. b) Right of the plaintiffs of cross examination of the deponent of the affidavit of the applications under Order 9 Rule 13 CPC in the light of Order 19 Rules 1 and 2 and Order 18 Rule 4 CPC in particular. 7. Admit. 8. Issue notice to the respondents. The petitioners shall serve the respondents by taking out personal notice through Registered Post with acknowledgment due and file proof of service personally, in addition to the regular mode of service. 9. Order XIX Rule 2 CPC provides that upon any application, evidence may be given by affidavit. Section 141 CPC makes applicable the procedural provisions of CPC in regard to suit, to be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction. As per the explanation “proceedings includes proceedings under Order IX CPC”. Order XVIII Rule 4 CPC provides for examination in chief on affidavit. ‘Evidence’ in Section 3 of	

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		the Evidence Act though does not include 'affidavit' but the provision of CPC permit evidence, examination in chief in suit on affidavit and upon application also on affidavit. 10. Prima facie, being of the view that there is right of cross examination and further that the observations made in the impugned order shall affect the decision on the merits of the applications pending before Junior Civil Judge, the proceedings in I.A.No.311 of 2020 in O.S.No.748 of 2019, on the file of II Additional Junior Civil Judge, Chittoor, shall remain stayed, till the next date of listing. 11. List in 07.07.2023. RNT,J Gk	

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