

Parliament of India to increase or diminish the area of Jammu and Kashmir, to alter its name or boundaries in the manner provided in Articles 3-4 only with the Legislature of Jammu and Kashmir consents. Herein the status of Jammu and Kashmir markedly differs from that of other States. In the case

of other States, only the view of their Legislatures are ascertained by the President before recommending the introduction of a Bill relating to these matters. But in the case of Jammu and Kashmir no such Bill shall be introduced in Parliament unless the Legislature of that State consents.

DECISION REPORTED IN 2008 (1) ALT 475 = 2007 (6) ALD 819 IS PER INCURIAM IN VIEW OF 1957 (2) AN.WR 106 (DB), REFERRED AND FOLLOWED IN 2007 (5) ALT 222 = 2007 (5) ALD 257

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1. In 2008 (1) ALT 475 = 2007 (6) ALD 819, it was held by A.P. High Court in Paragraph 3 at Page 77 (Column No.1) as follows :

“3. In this case, as summons were duly served on the revision petitioner, as per Article 123 of Limitation Act, the period of limitation is 30 days from the date of decree. As the petition under Rule 13 of Order 9 CPC is filed more than 30 days after date of decree, revision petitioner has to necessarily file a petition under Section 5 of Limitation Act, because, without condonation of delay, the petition under Rule 13 of Order 9 CPC filed beyond 30 days from the date of decree, cannot be entertained by the Court.”

2. Again at Para 5 in page 477 (Column No.2) it was held as follows :—

“5. The prayer in a petition under Section 5 of Limitation Act would be to condone the delay in filing the relevant petition. The prayer in a petition filed under Order 9 Rule 13 CPC would be set aside the *ex parte* decree. The reliefs to be

granted in these two petitions would be entirely different. As stated above, if the delay is not condoned, the petition under Order 9 Rule 13 CPC will have to be dismissed as being barred by time.”

3. But, there is a Division Bench decision of A.P. High Court reported in 1957 (2) An.WR 106 (DB), following a Supreme Court decision. The said Division Bench decision was referred and followed by A.P. High Court in a decision reported in 2007 (5) ALT 222 (224, Para 8) = 2007 (5) ALD 257

4. Para 8 of 2007 (5) ALT 222 = 2007 (5) ALD 257 is as follows :

“8. The Court below, while considering the applications mainly proceeded on the ground, whether the applications filed by the respondents – defendants were maintainable without an application to condone the delay in filing application to set aside the *ex parte* decree being filed. No doubt, the respondents – defendants in support of their pleas rely upon various judicial pronouncements to the effect that the Court is competent to

condone delay even without filing formal application under Section 5 of Limitation Act, 1963, if the petitioners properly explained the delay in the affidavits filed in support of the I.A.S; filed under Order 9 Rule 13 C.P.C. There is no quarrel with the settled proposition of law. In fact, way back in the year 1957, Division Bench of this Court in *Ramachandra Rao v. Seshaiah*, 1957 (2) An.WR 106 (DB), held that, 'non filing of formal application under Section 5 of Limitation Act, 1963, would not come in the way of the Court exercising power conferred on it under Order 9 Rule 13 CPC. Once the petitioner satisfies the Court by giving valid or cogent reasons, the Court is competent to condone the delay without a formal application under Section 5 of Limitation Act, 1963 being filed. The Division Bench further held that 'non-filing of applications under Section 5 of the Limitation Act, 1963 would itself not be a ground to dismiss the application filed under Order 9 Rule 13 CPC as held by the Supreme Court."

5. Thus, A.P. High Court following its earlier Division Bench decision reported in 1957 (2) An.WR. 106 (DB), which in turn, followed a Supreme Court decision, held in 2007 (5) ALT 222 = 2007 (5) ALD 257, that non-filing of application under Section 5 of Limitation Act 1963, itself, is not a ground to dismiss the application filed under Order 9 Rule 13 CPC for setting aside *ex parte* decree.

6. In 2008 (1) ALT 475 = 2007 (6) ALD 819, the above Division Bench decision or decision reported in 2007 (5) ALT 222 = 2007 (5) ALD 257, were not cited for consideration of the A.P. High Court. Had the said two decisions been cited, the learned Judge, delivering judgment in 2008 (1) ALT 475 = 2007 (6) ALD 819, would not have held that the petition under Order 9 Rule 13 C.P.C., being filed more than 30 days after the date of decree, *i.e.*; the prescribed period of limitation under Article 123 of Limitation Act, 1963, the petitioner has to necessarily file a petition under Section 5 of Limitation Act, 1963, because, without condonation of delay, the petition under Order 9 Rule 13 CPC will have to be dismissed, as being barred by time.

7. So, I am of the honest opinion that the proposition of law laid down by a Single Judge of A.P. High Court in the decision reported in 2008 (1) ALT 475 = 2007 (6) ALD 819, is contrary to the one laid down by a Division Bench of A.P. High Court, reported in 1957 (2) An.WR 106 (DB), following a Supreme Court decision and followed by a Single Judge of A.P. High Court in a decision reported in 2007 (5) ALT 222 = 2007 (5) ALD 257 and hence *per incuriam* and, hence, the said decision reported in 2008 (1) ALT 475 = 2007 (6) ALD 819, is not according to law and hence not binding.

**Memorial Lecture on
"GLOBALIZATION AND LABOUR IN DEVELOPING COUNTRIES"
in Memory of Shri Amancharla Krishna Murthy
by Hon'ble Mr. Justice B. Sudershan Reddy
Judge, Supreme Court of India on 2-2-2008 at Hyderabad**

Let me at the outset express my deep sense of honour on being invited to deliver this memorial lecture on "Globalisation and Labour in Developing Countries" in memory

of Shri *Amancharla Krishna Murthy* a noted social activist and a lawyer of great integrity with a sense of public spirit. To me, as indeed to most of you gathered here, it must