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HON'BLE SRI JUSTICE A.V.SESHA SAI
CIVIL REVISION PETITION No.5118 OF 2014

ORDER:

The defendants 2 to 4 in O.S.No.34/2013 on the file of the Court of the Senior Civil Judge, Sircilla, Karimnagar District are the petitioners in the present revision, filed under Section 115 of the Code of Civil Procedure. This revision assails the order dated 21.11.2014 passed by the said Court, dismissing I.A.No.311/2014 filed under Section 5 of the Limitation Act by the petitioners herein, seeking condonation of delay of 161 days in filing the petition to set aside the *ex parte* decree.

2. Heard Sri Venkateshwar Varanasi, learned counsel for the petitioners and Sri V.V.Ramana Rao, learned counsel for the respondents 1 and 2 apart from perusing the material available before this Court.

3. Respondents 1 and 2 herein instituted O.S.No.34/2013, seeking a preliminary decree of partition, claiming 1/6th share each in the plaint schedule property. The Court of the Senior Civil Judge, Sircilla passed a preliminary decree on 14.11.2013. Thereafter, the defendants 2 to 4/petitioners herein filed an application in I.A.312/2014 under the provisions of Order 9 Rule 13 of the Code of Civil Procedure, seeking to set aside the said preliminary decree. Along with the said application, petitioners herein also filed I.A.No.311/2014 under the provisions of Section 5 of the Limitation Act, seeking condonation of delay of 161 days in filing the said application. The learned Senior Judge by way of an order dated 21.11.2014 dismissed the said application.

4. Aggrieved by the said order passed by the learned Single Judge, dismissing the condone delay petition, the present revision has been filed.

5. It is contended by the learned counsel for the petitioners that the order passed by the learned Senior Civil Judge, Sircilla is erroneous, contrary to law and is opposed to the provisions of Section 5 of the Limitation Act. It is further submitted by the learned counsel that the

learned Senior Civil Judge while dismissing the application did not assign any valid reasons. It is nextly contended that the order of the Court below is not in accordance with the law laid down by the Hon'ble apex Court. It is further contended by the learned counsel that had the contents of the affidavit filed in support of the application been considered from proper perspective, the order under challenge would not have emanated.

6. On the contrary, it is vehemently contended by the learned counsel for the respondents that the order under challenge is strictly in conformity with the provisions of Section 5 of the Limitation Act and there is no illegality nor any material infirmity in the impugned order, as such, the present revision is not maintainable and the petitioners herein are not entitled for any relief.

7. The suit in the present matter is one for partition and the suit schedule property is a house property situated at Sircilla town of Karimnagar District. Defendants 2 and 3 are the sisters of the plaintiffs and the

4th defendant is the brother of the plaintiffs and they are the sons of the first defendant who passed away pending proceedings. In the present case, the Court below passed an *ex parte* preliminary decree on 14.11.2013. In the affidavit filed in support of the application in I.A.311/2013, the petitioners herein assigned certain reasons to justify their absence. It is stated in the affidavit that they were in deep depression after the death of their mother on 23.05.2013 as such they could not contact their counsel to file the written statement. The learned Senior Civil Judge dismissed the application, holding that more than five months delay is not a small one. It is settled and well established proposition of law that the courts are required to be liberal while considering the applications filed under Section 5 of the Limitation Act when there are no *mala fides* on the part of the parties applying for. In the instant case, the delay is of 161 days. As the relief sought for in the present suit is one for partition and as the parties are related, this Court in order to give a quietus for the entire controversy, deems it appropriate to

give opportunity to the petitioners herein to prosecute the suit on merits. This Court also feels it appropriate to compensate the respondents by awarding costs of Rs.5,000/- payable to the counsel for the respondents.

8. Though there is a delay of 161 days in filing the application, this Court deems it appropriate to condone the delay taking into consideration the nature of controversy in the case.

9. For the aforesaid reasons, revision is allowed, setting aside the order dated 21.11.2014 passed in I.A.No.311 of 2014 in O.S.NO.34 of 2013 and consequently I.A.No.311 of 2014 is allowed subject to payment of costs of Rs.5,000/- (five thousand only) to the learned counsel for the respondents herein, within a period of two weeks from today and the delay of 161 days delay in filing I.A.No.312 of 2014 is condoned. Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:02.02.2015
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HON'BLE SRI JUSTICE A.V.SESHA SAI

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Date :02 .02.2015

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HON'BLE SRI JUSTICE A.V.SESHA SAI
CIVIL REVISION PETITION No.5118 OF 2014

Date :05.02.2015

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Between:

Thulasi Manjula D/o Late Narsaiah,
Aged about 39 years, Occ: House Hold,
R/o H.No.5-4-37, Pathipaka Street,
Sircilla Town and Mandal, karimnagar District.

... Petitioner

and

Thaduri Ramana w/o Sudarshan,
Aged about 51 years, Occ: House Hold
And two others.

... Respondents

