

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.2178 of 2014

ORDER:

Heard Sri H.Venugopal, learned counsel for the petitioners and Sri A.Raghurama Autova, learned counsel for the respondent.

2. This Revision Petition is filed challenging the Order dt.24-03-2014 in I.A.No.1720 of 2013 in O.S.No.1160 of 2012 of the II Additional Junior Civil Judge, Warangal.

3. Petitioners herein are defendants in the suit. The suit was filed against the petitioners for a perpetual injunction by the respondent restraining the petitioners from interfering with his alleged possession and enjoyment of the plaint schedule property.

4. The 2nd petitioner is the mother of 1st petitioner as well as respondent.

5. An *ex parte* decree was passed against the petitioners on 29-03-2013. Prior thereto on 13-03-2013, since they had not filed Written Statement, they were set *ex parte* in the suit.

6. On 22-08-2013, petitioners filed application I.A.No.1720 of 2013 under Section 5 of the Limitation Act, 1963 to condone the delay of 135 days in filing application

to set aside the *ex parte* decree. They alleged that 1st petitioner had filed a suit O.S.No.255 of 2005 for partition; that there was an amicable settlement of the disputes; that the respondent had managed the postal authorities and got returned the registered cover containing the summons to be served on the petitioners in the suit and thus managed to get an *ex parte* decree by playing fraud on the Court. It was further contended that only in the first week of May 2013, 1st petitioner had received notice in E.P.No.406 of 2013 and until then he did not know the pendency of the suit proceedings.

7. This application was opposed by the respondent/plaintiff contending that the petitioners were served with notices, summons and copies of the plaint through process server of the Court and it was their duty to appear in the Court but they did not do so. He also claimed that he is unaware of the suit O.S.No.255 of 2005.

8. By order dt.24-03-2014, the Court below dismissed I.A. It recorded that on 13-03-2013, the petitioners were set *ex parte* since they did not file Written Statement and on 29-03-2013, *ex parte* decree was passed against them. It further held that the record reveals that in I.A.No.1212 of 2012 in O.S.No.1160 of 2012 on 08-08-2012, one E.Malleshham, advocate had filed vakalat on behalf of petitioners. It rejected the contention of the petitioners that the respondent had

managed the postal authorities and got returned the registered cover and held that the reason assigned by the petitioners that they came to know about present suit only in 2013, cannot be accepted. Therefore, the application is rejected.

9. Challenging the same, this Revision Petition is filed.

10. Learned counsel for the petitioners contends that the petitioners are close family members and that since the suit is for an injunction and there was an earlier suit for partition filed by 1st petitioner which ended in a settlement, the Court below ought to have condoned the short period of delay of 135 days in seeking to set aside an *ex parte* decree.

11. Learned counsel for the respondent however refuted the said contentions. He stated that the Court below has given valid reasons for rejecting I.A.No.1720 of 2013 and there is no necessity to interfere with the said order passed by the Court below.

12. From the facts narrated above, it is clear that the petitioners are defendants in the suit for perpetual injunction filed against them by the respondent and because they did not file Written Statement, they were set *ex parte* on 13-03-2013 and on 29-03-2013, an *ex parte* decree was passed against them.

13. Learned counsel for the petitioners had not disputed the statement in the order of the Court below that the petitioners had engaged Sri E.Mallesham, advocate on 08-08-2012 in I.A.No.1212 of 2012 in the same suit. Therefore, it cannot be said that the petitioners were unaware of the pendency of the suit. Consequently, the plea that the respondent managed the postal authorities and got returned the postal covers containing the suit summons, cannot be accepted. Merely because the petitioners are family members, no indulgence can be shown to them particularly when they suppressed the fact that they had engaged the counsel Sri E.Mallesham, advocate in August 2012 itself and did not contest the suit.

14. In this view of the matter, I do not find any merit in the Revision Petition and consequently the Civil Revision Petition is dismissed. No costs.

15. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-07-2015

kvr