

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.1577 of 2014

ORDER:

Defendant Nos.1, 2, 4 and 5 in O.S.No.69 of 2008 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.

In the present revision challenge is to the order, dated 22-04-2014 passed by the said Court in I.A.No.715 of 2013 filed by the petitioners herein under Section 5 of the Limitation Act.

Heard Sri M. Rajamalla Reddy, learned counsel for the petitioners and Sri V.V. Ramana Rao, learned counsel for the respondents apart from perusing the material available before the Court.

The respondents 1 and 2 herein instituted O.S.No.69 of 2008 for declaration of title and for recovery of vacant possession of the plaint schedule property. The learned Senior Civil Judge, Sircilla passed an *ex parte* decree against the petitioners herein on 11-07-2012. Seeking to set aside the said decree, the petitioners herein filed I.A.No.716 of 2013 under the provisions of Order 9 Rule 13 of the Code of Civil Procedure. Along with the said application petitioners herein also filed the present I.A.No.715 of 2013 under Section 5 of the Limitation Act, seeking condonation of delay of 403 days in filing I.A.No.716 of 2013.

The plaintiffs/respondents 1 and 2 herein filed counter, resisting the said application. The learned Senior Civil Judge, by way of an order, dated 22-04-2014, dismissed the said application. Assailing the said order passed by the learned Senior Civil Judge, refusing to condone the delay of 403 days in filing I.A.No.716 of 2013 under Order 9 Rule 13 of the Code of Civil Procedure, the present revision has been filed.

It is contended by the learned counsel for the petitioners that the orders passed by the Court below are erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Section 5 of the Limitation Act. It is further contended that since the substantial rights of the parties are involved in the suit, the Court below ought to have given opportunity to the petitioners herein to contest the matter on merits. It is also submitted by the learned counsel that the Court below ought to have adopted liberal approach, while considering the application, by taking into consideration the averments in the affidavit filed in support of the application.

In support of his submissions and contentions learned counsel for the petitioners placed reliance on the judgment of the Hon'ble Apex Court reported in AIR 1998 Supreme Court 3222.

On the contrary, it is submitted by the learned counsel for the respondents that the orders under revision are inconformity with the provisions of Section 5 of the Limitation Act and there is no illegality nor any jurisdictional error in the order passed by the Court below as such the present revision is not maintainable under Section 115 of the Code of Civil Procedure. It is further argued by the learned counsel that earlier also similar applications were filed by the petitioners herein and the Court below allowed the said applications and even then the petitioners herein did not evince any interest in prosecuting the case diligently. It is eventually submitted by the learned counsel for the respondents that the petitioners herein are not entitled for any sympathy from this Court in view of their conduct.

In the above background, now the issue that emerges for consideration of this Court is:

Whether the order passed by the Court below, refusing to condone the delay of 403 days in filing the application under Order 9 Rule 13 of the Code of Civil Procedure is in accordance with law ?

The information available before this Court manifestly discloses that the

plaintiffs/respondents 1 and 2 herein instituted the present suit for declaration of title and recovery of possession of the suit schedule property, admeasuring Ac.7-12 gts., situated at Thimmapur village, Chandurthy Mandal, Karimnagar District. There is absolutely no dispute with regard to the fact that the parties to the present revision are not educated and they are illiterates and have rural background. There is also no controversy with regard to the fact that earlier also similar applications were filed by the petitioners herein and the same were allowed by the Court on 21-12-2010. In the affidavit filed in support of the present application it is the justification sought to be offered by the petitioners herein that the deponent of the affidavit i.e., Nareddy Narayana Reddy (defendant No.1) has been authorized by the other defendants in the suit to look after the matter. It is also the case of the deponent of the affidavit that he is a Cardiac patient and taking medicines and due to the said fact of deterioration of his health he could not contact his counsel.

The plaintiffs/respondents 1 and 2 herein filed counter-affidavit, denying the averments made in the affidavit filed in application under Section 5 of the Limitation Act and stating that there are absolutely no bonafidees on the part of the petitioners herein in filing the present application and the petitioners herein are not entitled for any indulgence of this Court.

It is a settled and well-established principle of law that the Courts are supposed to be liberal while dealing with Section 5 of the Limitation Act for condonation of delay. In this connection it may be appropriate to refer to the judgment cited by the learned counsel for the petitioners in case of **N. BALAKRISHNAN v. M. KRISHNAMURTHY**. In the said judgment the Hon'ble Apex Court at paragraph No.13 held as under:

"13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary

guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

In the instant case this Court is also of the opinion that there are certain lapses on the part of the petitioners herein in approaching the Court and in prosecuting the matter with due diligence but the same cannot be the sole criterion for non-suiting the petitioners herein. Since it is the suit for declaration of title and recovery and as the substantial rights are involved in the present suit, this Court is of the definite view that one opportunity can be given to the petitioners herein to have the matter contested on merits by imposing costs in order to have a complete quits for issues in the suit.

For the aforesaid reasons and having regard to the principles laid down in the above referred judgment of the Hon'ble Apex Court and keeping in view the totality of the circumstances including the substantial rights involved in the matter, the Civil Revision Petition is allowed, setting aside the order, dated 22-04-2014 passed by the learned Senior Civil Judge, Sircilla, Karimnagar District and consequently I.A.No.715 of 2013 is allowed, condoning the delay of 403 days in filing the petition to set aside the *ex parte* decree, dated 11-07-2012 subject to payment of costs of Rs.7,500/- (Rupees seven thousand and five hundred only) to the plaintiffs/respondents 1 and 2 herein within a period of one month from the date of receipt of a copy of this order. There shall be no order as to costs.

It is also made clear that in the event of failure to adhere to the said condition within the time stipulated above, the order impugned in the present revision stands automatically revived. Since the suit is of the year 2008 this Court deems it appropriate to direct the Court below to dispose of the suit as expeditiously as possible.

It is also stated by the learned counsel for the respondents that his clients have been delivered possession of the property, by the Bailiff in the month of September, 2013. That being so, *status quo* as on today shall be

maintained by the parties to the present litigation, pending disposal of the main suit.

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.V. SESA SAI, J

March 30, 2015

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March 30, 2015

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