

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

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CIVIL REVISION PETITION No.5105 OF 2014

ORDER:

This revision filed by the plaintiff in O.S.No.97 of 2008 on the file of the Court of the Senior Civil Judge, Peddapalli, Karimnagar District, calls in question the order dated 16.09.2014 passed by the said Court, allowing I.A.No.404 of 2014 filed by the defendant/respondent herein under Section 5 of the Limitation Act, seeking condonation of delay of 554 days in filing petition under Order IX Rule 9 of the Code of Civil Procedure.

Heard the learned counsel for the petitioner and the learned counsel for the respondent apart from perusing the material available before the Court.

The petitioner herein instituted O.S.No.97 of 2008 for partition and separate possession of the suit schedule property and the learned Judge by way of an order dated 30.03.2012 dismissed the suit. Seeking to set aside the said order, the plaintiff/respondent herein filed an application under Order IX Rule 9 of CPC and along with the said application, the plaintiff/respondent also filed the present I.A.No.404 of 2014 under Section 5 of the Limitation Act for condonation of delay of 554 days in filing Order IX Rule 9 application. The learned Senior Civil Judge, by way of an order dated 16.09.2014, allowed the said application on payment of costs of Rs.3,000/-. As against the said order, the instant revision has been filed by the first defendant.

It is contended by the learned counsel for the petitioner/1st defendant that the order under challenge is illegal, contrary to law and opposed to the very spirit and object of the provisions of Section 5 of the Limitation Act. It is further contended by the learned counsel that the plaintiff/respondent herein did not file any medical certificate to show the alleged illness. It is further contended by the learned counsel that the plaintiff did not assign proper reasons, as such, the

Court below erred in allowing the application. On the contrary, it is contended by the learned counsel for the first respondent/plaintiff that the Court below is perfectly justified in passing the impugned order and there is no illegality nor any material infirmity in the impugned order, as such, the present revision is not maintainable. It is further contended by the learned counsel for the first respondent that since the Court below exercised its discretion and condoned the delay on payment of costs of Rs.3,000/-, the order is not amenable for any correction by this Court.

The present suit is one for partition and separate possession and the substantial rights of the parties are involved in the suit. The case of the plaintiff is that he is a heart patient and was hospitalised for treatment in Kamineni Hospital, Hyderabad, as such, he could not come to the Court for prosecuting the case. It is a settled and well established proposition of law that the Courts must be liberal while dealing with the applications filed under Section 5 of the Limitation Act. The learned Senior Civil Judge took note of all aspects of the matter and exercised his discretion and condoned the delay in filing Order IX Rule 9 CPC application on payment of costs of Rs.3,000/-. Since the Court below obviously took into consideration the subject matter of the suit and the nature of controversy in the suit and exercised its discretion by condoning the delay on payment of costs of Rs.3,000/-, this Court is not inclined to meddle with the said order passed by the learned Senior Civil Judge. However, keeping in view the value of properties, this Court deems it appropriate to enhance the costs from Rs.3,000/- to Rs.5,000/-. It is submitted by the learned counsel for the petitioner that pursuant to the orders of the Court below the plaintiff already deposited Rs.3,000/- before the Court below.

For the aforesaid reasons, the Civil Revision Petition is dismissed. However, the first respondent herein shall pay an amount of Rs.2,000/- in addition to the amount already ordered by the Court below, i.e., Rs.3,000/-. The said amount of Rs.2,000/- shall be paid to

the counsel for the petitioner/first defendant herein within a period of one week from today. No order as to costs.

JUSTICE A.V.SESHA SAI

27.01.2015
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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