

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 3739 of 2014

ORDER:

This civil revision petition is directed against the order in I.A.No.718 of 2009 in O.S.No.192 of 2007 passed by the learned Senior Civil Judge, Nalgonda, dismissing the application of the petitioners for condoning the delay of 272 days in filing the petition to set aside the *ex parte* decree dated 20.10.2008 passed in the suit.

The petitioners herein are defendants 3 and 4 in the suit and they claimed that they are the purchasers of the property from the father of the plaintiffs 3 to 5. The suit was filed for partition of the $\frac{2}{3}$ rd share of the plaintiffs and the same was decreed on 20.10.1998 as the petitioners herein were set *ex parte* and other defendants did not contest the suit. The suit was decreed *ex parte* on 20.10.1998 and the application was filed by the petitioners in I.A.No.718 of 2009 on 19.08.2009. The said application was disposed of by the lower Court on 21.08.2014, after five years. The application of the petitioners was dismissed on the ground that they have not shown sufficient cause for condoning the delay in filing the petition to set aside the *ex parte* decree.

The learned counsel for the petitioner while relying on the decision of the Hon'ble Apex Court in **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai**, submits that the Court should have taken liberal approach in deciding the application for condonation of delay for setting aside an *ex parte* decree and wrongly dismissed the application.

The learned counsel for the respondent, on the other hand, relying on the decision of this Court in **A. John Peter v. Gangisetty Madduleti @ Maddhuletaiah** and **Kommididi Mahender Reddy v. Kommididi Suryamma**, submits that the petitioners failed to show sufficient cause for condoning the delay and the trial Court rightly dismissed their application.

I have perused the order passed by the trial Court along with the affidavits and counter filed by the parties.

The petitioners also filed written statement along with their application which was filed seeking condonation of 272 days delay in filing petition to set aside the *ex parte* decree. They filed Ex.A1- medical certificate also but the same was not taken into consideration by the trial Court. The trial Court should have seen that it is a suit for partition and none of the defendants, other than the petitioners herein, contested the suit. The suit was filed in 2007 while decreed *ex parte* in 2008. The present application seeking condonation of delay, which was filed in 2009, was disposed of in 2014, i.e., after five years. The petitioners' claim that they are the purchasers from the father of plaintiffs 3 to 5.

In the circumstances, this Court feels that prejudice would be caused if the petitioners were not heard by trial Court in the suit filed by the respondents herein/plaintiffs.

In the circumstances, the civil revision petition is allowed, on payment of costs of Rs.5,000/- (Rupees five thousand only) to the plaintiffs, within a period of 30 days from the date of receipt of copy of this order. Since the petitioners have already filed written statement, the lower Court shall endeavour to complete the trial of the suit, as early as possible, preferably within a period of six months from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

A. RAMALINGESWARA RAO,J

17th April, 2015

PNV