

**HON'BLE SRI JUSTICE S. RAVI KUMAR**

**CIVIL REVISION PETITION Nos.1656 , 3146 of 2004 &  
CIVIL MISCELLANEOUS APPEAL No.4395 of 2004**

**COMMON ORDER:**

C.R.P.No.1656 of 2004 is filed against the order dated 23.01.2003 in I.A.No.4530 of 2003 in O.S.No.659 of 1999 on the file of II Additional Junior Civil Judge, Warangal.

2. Brief facts leading to this revision petition are as follows:

Revision petitioner herein filed O.S.No.659 of 1999 for specific performance of contract of sale against five (5) defendants, who are father and sons, and during pendency of the suit, 1<sup>st</sup> defendant father died and plaintiff filed the above referred I.A.No.4530 of 2003 to condone delay of 400 days in bringing wife of deceased as legal representative of D-5 to the proceeding and also filing application to set aside abatement and to bring legal representative and the trial Court dismissed the delay condonation application and other applications to set aside abatement and bring her legal representative. Aggrieved by the same, this revision is preferred against the dismissal of the delay condonation petition.

3. C.R.P.No.3146 of 2004 is preferred against the dismissal of abatement petition and C.M.A.No.4395 of

2004 is preferred against dismissal of L.R. application.

4. Respondents in spite of service of notice neither appeared in person nor through any advocate.

5. Heard advocate for revision petitioner.

6. Advocate for revision petitioner submitted that revision petitioner is a temple and it parted with substantial amount paid as advance for purchase of the property and due to administrative reasons in gathering information about the proposed L.R., the delay is occurred and trial Court without considering the same, dismissed the application holding that revision petitioner has knowledge through memo filed by other side on 17.06.2002. He submitted in the memo dated 17.06.2002 only information with regard to death of D-1 is furnished but there are no details of remaining L.Rs of the deceased-D-1, since the plaintiff being a temple, it took considerable time in ascertaining the particulars of the remaining Legal representative i.e., wife of the deceased and that the delay was not intentional. He submitted that though the sons were already on record, they failed to disclose the details of the proposed L.Rs therefore an opportunity may be given to the plaintiff to bring Legal Representative of the deceased-D-1, as valuable right are involved in the suit.

7. I have perused the material papers and also

impugned order dated 23.01.2004. Learned trial judge mainly relied on the memo dated 17.06.2002 filed on behalf of the respondent to come to the conclusion that plaintiff has knowledge and intentionally did not take steps to bring the LR's. The trial Court recorded that the death was in the knowledge of plaintiff as per Memo dated 17.06.2002 and about the survival of remaining legal representatives.

8. Learned counsel for revision petitioner produced a copy of memo dated 17.06.2002. A perusal of which disclose that no details of remaining L.R's are given in the said memo and only information is that D-1 died on 18.05.2002.

9. As seen from the material, the suit is filed for specific performance of agreement of sale and substantial amount was paid as advance at the time of agreement. There is no specific material on record to show that plaintiff intentionally did not take steps to bring wife of deceased-D1 on record. When the memo filed by other side do not disclose any details of the remaining L.R's of the deceased attributing knowledge to the plaintiff, in my view, is not at all correct, particularly, when the plaintiff is an institution. As rightly pointed out it will take considerable time to gather information regarding the details of the Legal Representatives. Learned trial judge ought to have given an opportunity to the plaintiff to

decide the lis on merits instead of on technicalities. Further, respondents herein, in spite of notice, did not choose to contest the revision.

10. For these reasons, I am of the view that the Court below committed error in attributing knowledge of details of L.Rs to the plaintiff and thereby dismissing delay condonation petition. Therefore, order of the trial Court is liable to be set aside. Since the suit is of the year 2003, I feel that some time has to be fixed for dispose of the suit, for which, plaintiff and defendants shall cooperate with the trial Court.

11. With above direction, impugned order dated 23.01.2004 is set aside and the delay condonation petition I.A.No. 4532 of 2003 is allowed. Consequently, C.R.P.No.1656 of 2004 preferred against dismissal of petition for setting aside abatement and C.M.A.No.4395 of 2004 preferred against dismissal of L.R. petitions are allowed and the Court below is directed to dispose of the suit O.S.No.659 of 1999 within six (06) months from the date of receipt of this order. No costs.

Miscellaneous petitions, if any pending, in this revision petition shall stand closed.

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**S. RAVI KUMAR, J**

Date: 25-02-2015  
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