

**HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**CIVIL REVISION PETITION No. 4995 of 2015**

**ORDER:**

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The present Civil Revision Petition is filed under Section 115 of C.P.C., aggrieved by the common order, dated 11.06.2015 passed in I.A.Nos.84 and 85 of 2015 in O.S.No.170 of 2013 on the file of the Senior Civil Judge, Sircilla.

The factual matrix of the issue is as under:

Respondent/plaintiff filed O.S.No.170 of 2013 seeking partition of the suit schedule property. The petitioner, who is the defendant in the said suit entered appearance through his counsel on 13.12.2013 but could not file written statement, as such the trial Court forfeited the right of the petitioner to file the statement. Basing on the evidence of PW.1, the trial Court passed an *ex parte* preliminary decree on 20.03.2014. On receipt of notices in the final decree petition, the petitioner came to know about the passing of preliminary decree. Immediately, the petitioner filed I.A.No.84 of 2015 praying to condone the delay of (216) days in filing the petition to set aside the *ex parte* preliminary decree dated 20.03.2014 and I.A.No.85 of 2015 for setting aside the *ex parte* preliminary decree.

A counter came to be filed by the respondent/plaintiffs denying the averments made in the affidavit filed in support of the petitions. It is stated that after passing of the preliminary decree, the respondent/plaintiff filed petitions for appointment of an advocate-commissioner and passing of final decree, wherein

the petitioners appeared through an advocate and took several adjournments in those petitions. It is also stated that the petitioner did not file any documentary proof showing his ill health and hence prayed to dismiss the petitions. After perusing the material on record and not being satisfied with the reasons stated by the petitioner in the affidavit, the trial Court dismissed both the petitions. Aggrieved by the same, the present Civil Revision Petition is filed.

Learned counsel for the petitioner submits that the petitioner came to know about the passing of an *ex parte* decree after receipt of notices in the final decree petition. He further submits that due to ill health, the petitioner could not meet his counsel for filing written statement. In view of the above, he submits that the delay of (216) days in filing an application to set aside the *ex parte* decree is neither willful nor wanton.

As seen from the record, the only ground on which the applications were rejected was that the delay of (216) days being abnormal and the petition is silent as to the date on which he fell sick. It is to be noted that the suit is filed for partition of the properties and the plaintiff is none other than sister of the defendant. It is true that the day today delay is not explained by the petitioner, but having regard to the circumstances under which the delay has occurred and taking into consideration the nature of the suit filed whereby substantial rights of the petitioner are affected if he is not heard, this Court is of the opinion that the order under challenge requires to be set aside.

Accordingly the Civil Revision Petition is allowed and the order under challenge is set-aside. However, the Senior Civil

Judge, Sircilla, is directed to dispose of O.S.No.170 of 2013 as expeditiously as possible, preferably within a period of four to six months from the date of receipt of a copy of the order.

There shall be no order as to costs. Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

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**JUSTICE C. PRAVEEN  
KUMAR**

21.12.2015  
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