

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.4532 of 2010

ORDER:

Heard Sri Vijay Kumar Heroor, learned counsel for the petitioner. None appears for the respondent.

2. This Revision Petition is filed challenging the order dt.18-08-2010 in I.A.No.266 of 2008 in O.S.No.135 of 2008 of the Additional Junior Civil Judge, Rajendranagar, Ranga Reddy District.
3. Petitioner herein is the plaintiff in the said suit. He filed the suit for specific performance of agreement of sale dt.31-05-1999 executed in his favour by the deceased 1st respondent during his lifetime. After the suit was filed, it appears that 1st respondent/1st defendant died on 16-03-2005.
4. The petitioner on 09-07-2007 filed I.A.No.266 of 2008 under Section 5 of the Limitation Act, 1963 to condone the delay of 695 days in filing petition to bring on record the legal representatives of the deceased 1st respondent and other applications to set aside the abetment and to bring them on record.
5. In the affidavit filed in respect of I.A.No.266 of 2008, it was alleged that 1st respondent died on 16-03-2005, but on account of ill-health, the petitioner having been hospitalized, application to bring on record legal heirs of the deceased 1st respondent was not filed.
6. No counter affidavit was filed by the respondent to this application and they were set *ex parte*.

7. By order 18-08-2010, the Court below dismissed the said application stating that no material is filed by the petitioner to prove that he was ill and that sufficient cause was not shown by the petitioner for condoning the said delay. It also observed that the petitioner has not alleged that he did not have knowledge of the death of the 1st respondent.
8. Challenging the same, this Revision Petition is filed.
9. Learned counsel for the petitioner contended that the order passed by the Court below is unsustainable inasmuch as no notice of the death of the 1st respondent had been served by the learned counsel 1st respondent, even though Written Statement had been filed on his behalf on 22-04-2004 itself through an advocate. When such is the position, without taking note of the said fact, the Court below ought not to have rejected the application I.A.No.266 of 2008 to condone the delay of 698 days in filing the petition to bring on record the legal representatives of the deceased 1st respondent.
10. Although notice in this Revision Petition has been issued to the respondents, none appears on their behalf.
11. In the absence of any material on record, to conclude that the death of 1st respondent was made aware to the petitioner or his counsel by the counsel engaged by the deceased 1st respondent in the suit in compliance of the statutory duty cast on him under Order 22 Rule 10-A CPC, it cannot be said that there is any unreasonable delay on the part of the petitioner in filing the petition to bring them on record as legal heirs of the

deceased 1st respondent.

12. I am therefore of the view that the order passed by the Court below cannot be sustained. The Civil Revision Petition is allowed and I.A.No.266 of 2008 is also allowed. No costs.

13. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16-09-2015

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