

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

CCCA.MP.No.590 of 2014

in/and

CCCA No.140 of 2014

-

Dated 22nd January, 2015

Between:

P.Narsing Rao

...Petitioner

And

P.Rama Rao (died) as LR's and others

...Respondents

Counsel for the petitioner: ---

Counsel for the respondents: Sri K.Raghuveer Reddy

The Court made the following:

COMMON JUDGMENT:

CCCA.MP.No.590 of 2014 is filed for condoning the delay of 801 days in filing the appeal against the final decree, dated 08.06.2012, in I.A.No.233 of 2003 in O.S.No.543 of 1995, on the file of the learned II Additional Senior Civil Judge, City Civil Court, Hyderabad.

For convenience, the parties are referred to as they are arrayed in the appeal.

At the hearing, there is no representation for the appellant.

I have heard Sri K.Raghuveer Reddy, learned counsel for the respondents, and perused the record.

Respondent No.1, who is the brother of the appellant, has filed the above-mentioned suit for partition. Pending the suit, he died and respondent Nos.2 to 5 have come on record in the place of the deceased respondent No.1. A preliminary decree was passed by the trial Court on 18.11.2002. Questioning the same, the appellant has filed

CCCA.No.102 of 2003. The said appeal was dismissed by this Court through its judgment on 07.09.2011. SLP(Civil)No.4703 of 2012 filed by the appellant was dismissed by the Supreme Court by order, dated 17.02.2012.

Respondent Nos.2 to 5 have filed I.A.No.233 of 2003 for passing of final decree. As the appellant has failed to file a counter affidavit for more than 3½ years, he was set *ex parte* on 31.07.2006 and his right to file objections to the Commissioner's report and counter in the IA was forfeited. Thereafter, on 22.06.2012, the appellant has filed I.A.No.1010 of 2012 under Order IX Rule 7 r/w Section 151 CPC to set aside *ex parte* order, dated 31.07.2006. The said application was dismissed by the lower Court by order, dated 23.08.2012. Feeling aggrieved by the said order, the appellant has filed C.R.P.No.4463 of 2012. By order, dated 24.09.2012, this Court has dismissed the said CRP as infructuous as the final decree was passed on 08.06.2012 with liberty to the appellant to question the final decree, if he is permitted to do so in law.

Thereafter, the appellant has filed I.A.No.1503 of 2012 in I.A.No.233 of 2003 to condone the delay of 34 days in filing the application under Order IX Rule 13 CPC for setting aside the final decree, dated 08.06.2012. By order, dated 11.02.2013, the lower Court has dismissed the said IA. The said order was questioned by the appellant in C.R.P.No.739 of 2013. This Court has dismissed the said CRP by order, dated 02.06.2014. Feeling aggrieved by the said order, the appellant has approached the Supreme Court by filing SLP(C).No.26755 of 2014, which was dismissed by order, dated 13.10.2014.

Thereafter, the appellant has filed the present appeal questioning the final decree. He has filed CCCA.MP.No.590 of 2014 for condoning the delay of 801 days in filing the said appeal. The main ground on which the appellant has sought condonation of delay is that he was pursuing the proceedings arising out of the orders setting him *ex parte* and that after exhausting all his remedies in respect thereof, he has filed the present appeal as a result of which, the delay of 801 days had

occurred.

On the facts of the present case, the appellant does not deserve indulgence of this Court for condoning the long delay of 801 days. While the appellant was entitled to question the orders setting him *ex parte*, the same does not constitute an acceptable ground for him not to file the appeal against the final decree within the period of limitation. Under law, the appellant was not barred from filing such appeal even though he was pursuing his remedy against the orders setting him *ex parte* in final decree proceedings. Indeed, the preliminary decree passed against him was confirmed on merits by this Court and also by the Supreme Court. The conduct of the appellant reveals that for one reason or the other, he wants to prevent the respondents from realising the fruits of the preliminary decree.

On a careful consideration of the facts and circumstances of the case and the explanation offered by the appellant, I am of the opinion that he is not entitled to any indulgence of this Court for condonation of a long delay of 801 days in the absence of convincing explanation offered by him.

CCCA.MP.No.590 of 2014 is therefore dismissed. As a sequel thereof, CCCA.No.140 of 2014 and CCCA.MP.No.545 of 2014 shall also stand dismissed.

C.V.NAGARJUNA REDDY, J

22nd January, 2015
VGB