

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.R.P.No.2529 of 2014

ORDER

Heard learned counsel appearing for the petitioner. None appears for the respondents in spite of service of notice on them and hence, this Civil Revision Petition is disposed of at the stage of admission.

This Civil Revision Petition is directed against the order dated 17.09.2011 passed in I.A.No.217 of 2010 in O.S.No.474 of 2007 by the Principal Junior Civil Judge, Bhongir.

The petitioners herein are the defendants and the respondents are the plaintiffs.

The plaintiffs filed O.S.No.474 of 2007 for partition and separate possession. The petitioner No.3, who is aged about 70 years, and who is looking after the case, after receipt of the suit summons, could not instruct his counsel for filing the written statement, as a result of which, an *ex parte* decree was passed on 8.10.2009. Hence, the petitioners-defendants filed I.A.No.217 of 2010 seeking to condone the delay of 131 days in filing the petition for setting aside the *ex parte* decree passed on 8.10.2009.

The respondents-plaintiffs resisted the application of the petitioners-defendants seeking condonation of delay on the ground that the 3rd petitioner has not filed any medical certificate and that the delay has not been properly explained. The trial Court has dismissed the application by observing that the alleged illness of joint pains and backache is not a severe ill health disabling the 3rd petitioner from instructing his counsel for filing the written statement. The trial Court

further observed that the alleged illness is quite common during the old age.

Since the petitioners-defendants lacked opportunity to contest the case on merits, this Court feels that they should be given an opportunity to contest the case on merits.

Accordingly, the order of the trial Court dated 17.08.2011 passed in I.A.No.217 of 2010 seeking condonation of delay of 131 days in filing the petition is set aside, on payment of costs of Rs.1,000/- to the plaintiffs in the suit, within a period of four weeks from today.

In the result, the Civil Revision Petition is allowed.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

13th February, 2015
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