

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Civil Revision Petition No.1159 of 2016

ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the II Additional Chief Judge, City Civil Court, Hyderabad, in I.A.No.1753 of 2014 in O.S.No.282 of 2010 dated 09.10.2015.

The petitioners herein are the plaintiffs in O.S.No.282 of 2010 and the respondents in I.A.No.1753 of 2014. The said I.A. was filed by the respondents herein (defendants in O.S.No.282 of 2010) under Section 5 of the Limitation Act to condone the delay of 330 days in filing a petition to set aside the *ex parte* decree dated 09.09.2013. In the affidavit filed in support of the said I.A., the first petitioner stated that he was old and was suffering from Parkinson's disease and was advised to take complete bed rest from 10.03.2012; due to his ill-health, he could not pursue the case and meet his counsel; an *ex parte* decree was passed on 09.09.2013 due to non-appearance and non-filing of the written statement on 14.08.2012; and if the *ex parte* decree is not set aside, it would cause irreparable loss to them.

In the order under revision, the Court below noted the first petitioner's contention that he was suffering from Parkinson's disease and that a medical certificate had been filed along with the petition. On the ground that the suit related to immovable property and that a liberal view should be taken in allowing the application of this nature, the Court below condoned the delay of 330 days believing the version of the first petitioner who was the main affected person. It is evident from the order under revision that not only had the first petitioner herein asserted that he was suffering from Parkinson's disease but had also filed a medical certificate to that effect. In the counter-affidavit filed to the said I.A., all that is stated by the petitioners herein is that the first respondent herein was claiming to be suffering from

Parkinson's disease to suit his convenience. Parkinson's disease is a debilitating disease, and as the first respondent herein had produced a medical certificate to show that he was suffering from such a disease which plea was accepted by the Court below, it cannot be said that the discretion exercised by the Court below, to condone the delay of 330 days, suffers from either a patent illegality or to have caused substantial injustice to the petitioners herein. The effect of the order passed by the Court below is only to set aside the *ex parte* decree which would only mean that the Suit would now have to be adjudicated on its merits. I see no reason, therefore, to interfere with the order passed by the Court below.

Sri V.Kishore, Learned Counsel for the petitioners, would request that the Court below be directed to decide the Suit within a specified time frame. It would be wholly inappropriate for this Court to fix any time frame as the Suit is of the year 2010. I have no reason to doubt that on a request being made by the petitioners herein for early disposal, the Court below shall consider the same and decide the Suit with utmost expedition.

Subject to the aforesaid observation, the Civil Revision Petition fails and is, accordingly, dismissed. The Miscellaneous Petitions, if any pending, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

Date:03.06.2016.

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