

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION NOs.2128 of 2001 & 98 of 2002

COMMON ORDER

Since both the revisions are arising out of one suit, they are taken up together, heard and being disposed of by this common order.

Assailing the order dated 30.08.2000 passed in I.A.No.1685 of 1999 in O.S.No.8 of 1998 by the District Judge, Vizianagaram, whereby the application filed by the petitioner under Section 151 of the Code of Civil Procedure seeking to condone the delay of 26 days in filing the petition for setting aside the order dated 16.06.1999 in I.A.No.2052 of 1998 in O.S.No.8 of 1998 was dismissed, C.R.P.No.2128 of 2001 is preferred.

Assailing the order dated 30.08.2000 passed in I.A.No.1684 of 1999 in O.S.No.8 of 1998 by the District Judge, Vizianagaram, whereby the application filed by the petitioner under Section 151 of the Code of Civil Procedure seeking to condone the delay of 26 days in filing the petition for setting aside the order dated 16.06.1999 in O.S.No.8 of 1998 was dismissed, C.R.P.No.98 of 2002 is preferred.

Heard both sides and perused the material on record.

The record shows that the petitioner-plaintiff filed O.S.No.8 of 1998 for cancellation of the decree passed in O.S.No.78 of 1981 filed for partition of the suit properties into 81 shares and for allotment of 11 separate shares to him i.e. plaintiff and for possession of the same after ejecting the defendants therefrom and for subsequent *mesne* profits. In the said suit, except D.7, D.9 to D.11, all other defendants were contesting the suit. D.7 and D.9 to D.11 remained *ex parte*. During the pendency of the suit, D.2 died. As such, I.A.No.2052 of

1998 was filed under Order XXII Rule 4 CPC for impleading the legal heirs of D.2. In said I.A., notices were issued to the proposed legal representatives of D.2, which were returned unserved as 'no such addressee'. Thereafter, the matter was posted to 16.06.1999 for taking steps. On 16.06.1999, when the matter was called, there was no representation. As such, I.A.No.2052 of 1998 was dismissed and consequently O.S.No.8 of 1998 was also dismissed. Seeking to condone the delay of 26 days in filing the petitions for setting aside the dismissal orders dated 16.06.1999 passed in I.A.No.2052 of 1998 and also in O.S.No.8 of 1998, I.A.No.1685 and 1684 of 1999 came to be filed. Aggrieved by the rejection of the same, present revisions are preferred by the petitioner-plaintiff.

As seen from the affidavits filed in the support of I.A.Nos.1684 and 1685 of 1999, on 16.06.1999, the advocate could not attend the Court due to some inconvenience as he was a resident of Parvathipuram. The averments further show that the advocate was suffering with T.B. and as such there was delay in approaching the Court with applications to set aside the orders dated 16.06.1999.

In ***Vedabai @ Vijayanatabai Baburao v Shantaram Baburao Patil and others***¹ the Apex Court held as follows:

“ In exercising discretion under Section 5 of the Limitation Act the Courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The

¹ 2001 (3) SCR 1053

Court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression 'sufficient cause' the principle of advancing substantial justice is of prime importance."

In view of the ratio laid down by the Apex Court referred to above and keeping in view of the fact that the delay in filing the applications to set aside the orders dated 16.06.1999 is only 26 days, this Court is of the view that the learned trial Judge ought to have condoned the delay *in stead* of dealing with the same in a technical manner.

Therefore, the orders dated 30.08.2000 passed in I.A.Nos.1684 and 1685 of 1999 in O.S.No.8 of 1998 by the District Judge, Vizianagaram, are hereby set aside and the delay of 26 days caused in filling petitions is hereby condoned.

Accordingly, both the Civil Revision Petitions are allowed. No order as to costs.

Miscellaneous petitions pending in these revisions, if any, stand closed.

JUSTICE C. PRAVEEN KUMAR

12.09.2016
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