

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

CRP.No.2066 of 2010

ORDER:

This revision, filed under Section 115 of the code of Civil Procedure, challenges the order dated 25.03.2010 passed by the Court of the learned District Judge, Chittoor in I.A.No.181 of 2006 in an un-numbered Appeal Suit of 2006.

2. Heard Sri S.V.Muni Reddy, learned counsel for the petitioner and Sri K.V.Subramanya Narsu, learned counsel for R.10 and Sri P.Vidyasagar for R.11 and perused the material available before this Court.

3. Petitioner herein instituted O.S.No.474 of 2001 on the file of the Court of the First Additional Junior Civil Judge, Chittoor against the respondents herein for partition. The said suit was dismissed by the learned First Additional Junior Civil Judge, Chittoor by way of judgment and decree dated 31.10.2005. Thereafter, the petitioner herein preferred an appeal suit on the file of the Court of the District Judge, Chittoor. Along with the said appeal suit, petitioner herein also filed I.A.No.181 of 2006 under Section 5 of the Limitation Act praying for condonation of delay in filing the said appeal suit. The learned District Judge, by way of an order dated 25.03.2010, dismissed the said application. The said order passed by the learned District Judge is under challenge in the present revision filed under Section 115 of the Code of Civil Procedure.

4. It is contended by the learned counsel for the petitioner that the order passed by the learned District Judge is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Section 5 of the Limitation Act. It is further argued by the learned counsel that the Court below ought to have adopted liberal approach while considering the application in view of the involvement of substantial rights of the parties.

5. On the contrary, it is contended by the learned Advocates for the respondents 10 and 11 that the learned District Judge is perfectly justified in dismissing the application and the order under challenge does not suffer from any error or infirmity, as such, the same is not amenable for any correction by this Court under Section 115 of the Code of Civil Procedure.

6. In the above backdrop, now the issue that calls for consideration of this Court is_”Whether the impugned order is in accordance with law?

7. It is no doubt true that while considering the applications filed under Section 5 of the Limitation Act the Courts are required to adopt liberal approach wherever substantial rights of the parties are involved. It is equally essential on the part of the persons making such applications to lay foundation to show the existence of sufficient cause for the delay.

8. In the instant case, a perusal of the affidavit filed in support of the delay application shows in vivid terms that except saying that the petitioner was suffering from jaundice and taking treatment at Walajah of Tamilnadu as such she could instruct her counsel to appeal in time, the petitioner did not make any endeavour to produce the material to substantiate the said stand. Another significant aspect which needs mention is that in the body of the affidavit petitioner herein kept blank at number of days. In fact, the Court below considered these aspects and dismissed the application filed by the petitioner herein. This, Court, in the facts and circumstances of the case, does not find any valid reason to meddle with the well articulated order passed by the Court below.

9. For the aforesaid reasons, the revision is dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No costs.

A.V.SESHA SAI, J

Date:28.10.2016
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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Dated 28th October, 2016

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