

THE HON'BLE Ms. JUSTICE G. ROHINI
CIVIL REVISION PETITION No.4217 OF 2008

Date: 19.12.2011

Between:

1. Smt. Subhadra and 4 others. ... Petitioners

And

1. K. Ranjeet Mohan and 3 others. ... Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI
CIVIL REVISION PETITION No.4217 OF 2008

ORDER :

This Civil Revision Petition is directed against the order dated 22.08.2008 in I.A.No.2975 of 2003 in O.S.No.705 of 1995 on the file of the Court of the I-Addl. Senior Civil Judge, R.R. District at L.B. Nagar.

The revision petitioners are the defendants 5 to 8 in O.S.No.705 of 1995. The respondent No.1 herein / plaintiff filed the said suit seeking a declaration that the Gift Deeds, dated 26.08.1995 and 30.04.1991 are void and not binding on the plaintiff and seeking a further direction to the defendants 4 to 8 to surrender vacant possession of the suit schedule plots. The defendants 1 to 3 and defendants 5 to 8 (revision petitioners) remained ex parte. However the defendant No.4 filed the written statement and contested the suit. Ultimately the suit was decreed by judgment dated 16.06.2003.

On 11.12.2003 the revision petitioners/defendants 5 to 8 filed an application under Order 9 Rule 13 of C.P.C. for setting aside the judgment and decree dated 16.06.2003 along with I.A.No.2975 of 2003 under Section 5 of the Limitation Act to condone the delay of 40 days in filing the petition under Order 9 Rule 13 of C.P.C. After hearing both the parties, the Court below by order dated 22.08.2008 dismissed I.A.No.2975 of 2003 and aggrieved by the same, the present Civil Revision Petition is filed by the defendants 5 to 8.

I have heard the learned counsel for both the parties and perused the material available on record.

Admittedly the defendant No.5 / petitioner No.1 herein is the wife of the defendant No.4, whereas the defendants 6 to 8/petitioners 2 to 4 herein are the children of the defendant No.4. In the affidavit filed in support of the application for condonation of delay, it was pleaded by the defendants 5 to 8 / revision petitioners that the defendant No.4 who was the head of the family used to take care of all the affairs of the family including legal matters and therefore they were under the impression that the suit was contested on their behalf also through the same counsel. It was further pleaded that the defendant No.4 died on 7.2.2003 and thereafter they could not follow-up the matter as they were engaged in search of their livelihood. As soon as they came to know about the ex parte decree, they obtained the certified copy of the judgment and decree on 6.8.2003 and thereafter

filed the application for setting aside the ex parte decree. Thus it was pleaded that the delay was neither willful nor wanton, but only on account of genuine reasons.

The plaintiff/1st respondent herein opposed the said application disputing the plea of the petitioners that they were not aware of the judgment and decree in O.S.No.705 of 1995. After hearing both the parties, the Court below dismissed the application by order dated 22.08.2008.

A perusal of the order under Revision shows that the application was dismissed by the Court below observing that the petitioners had not approached the Court with clean hands. The Court below also disbelieved the plea that the petitioners were ignorant of the court proceedings.

It is contended before this Court by the learned counsel for the petitioners that though the revision petitioners were set ex parte, they ought to have been brought on record as the legal representatives of the deceased defendant No.4. It is contended that the Court below committed grave error in proceeding with the suit and passing the judgment and decree in favour of the plaintiff without bringing the revision petitioners on record.

At the outset, it is to be noticed that the order under Revision was passed on an application filed under Section 5 of the Limitation Act for condonation of the delay. Therefore, it is not necessary to go into the merits of the case at this stage and the only point that requires consideration is whether "sufficient cause" is made out for condonation of delay. It is true that the delay is only 40 days. However as held in N. BALAKRISHNAN v. M.KRISHNA MURTHY^[1], length of delay is no matter, but acceptability of the explanation is the only criterion.

In the present case, after taking into consideration the conduct of the petitioners/defendants 5 to 8 as well as the defendant No.4 who is none other than the husband of the defendant No.5 and father of the defendants 6 to 8, the Court below recorded a finding that the

petitioners cannot plead ignorance of the court proceedings and that they did not approach the Court with clean hands. Thus the application for condonation of delay was dismissed by a well reasoned order holding that the explanation offered was not acceptable. Such discretion exercised by the Court below on application of mind to the facts and circumstances of the case cannot be termed perverse or illegal. Hence I do not find any justifiable reason to hold that the order under Revision suffered from any material irregularity in exercise of jurisdiction conferred under law. Therefore the interference by this Court is not warranted on any ground whatsoever.

Accordingly, the Civil Revision Petition is dismissed.

No costs.

G. ROHINI, J

Date: 19.12.2011
GBS

[\[1\]](#) 1998 (7) SCC 123