

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

CIVIL REVISION PETITION No. 2614 of 2016

ORDER:

This revision arises out of an order passed by the executing Court in a final decree application, appointing an Advocate Commissioner to inspect the property and suggest a division by meets and bounds.

2. Heard Mr. Y. Subrahmanyam, learned counsel for the petitioner/1st defendant and Mr. B. Devanand, learned counsel appearing for the 1st respondent/plaintiff, who is the caveator.

3. The suit filed by the 1st respondent/plaintiff in O.S.No.150 of 2009 for partition and separate possession of the suit schedule properties, was decreed on 31.03.2015, granting a preliminary decree of the 1st respondent's 1/5th share.

As against the said judgment and decree, the petitioner herein, who was the 1st defendant, has filed a regular first appeal on the file of the XV Additional District Judge, Nuzvid. Since there was a delay in filing the appeal, he has also taken out an

application in I.A.No.341 of 2016 for condonation of delay of 355 days in filing the appeal. Notice has been ordered in the application for condonation of delay and it is yet to be disposed of.

4. In the meantime, the successful plaintiff filed a final decree application in I.A.No.578 of 2015 in which the Court below passed an order on 05.02.2016 appointing an Advocate Commissioner. Therefore, the petitioner/1st defendant is before this Court contending that his valuable right of appeal will get lost, if the final decree proceedings come to a completion.

5. Rightly or wrongly, there is an appeal now filed by the petitioner/1st defendant. So long as the application for condonation of delay is not disposed of, the petitioner would not know the fate of his appeal. Therefore, I am of the considered view that the passing of final decree shall be stayed, with a direction to the lower appellate Court to dispose of the condone delay application within a timeframe.

6. In view of the above, this Civil Revision Petition is ordered, directing the trial Court not to

pass final decree, but to proceed with all further steps except the last step of passing of final decree. In the meantime, the lower appellate Court shall take up the application for condonation of delay and dispose it of, in accordance with law, within a period of two (2) weeks. Once the delay is condoned, the petitioner/1st defendant should take all steps to have the appeal numbered and move a stay application in the regular appeal. The stay of passing of final decree granted herein, will be in force for a period of eight (8) weeks, to enable the petitioner/1st defendant to do two things, namely (a) to have his condone delay application disposed of, and (b) to get the appeal numbered and to move a stay application in the regular appeal.

Consequently, miscellaneous petitions if any pending in the revision shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

17th June, 2016

Note: Furnish C.C. by 20.06.2016.

(b/o)
cbs

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