

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

+ CIVIL REVISION PETITION No.2624 OF 2016

% 02nd September, 2016.

Padigi Pedda Ranga Reddy S/o.Babi Reddy,
R/o.Kothapalli Village, Gorantla Mandal,
Anathapuram District and another

.. PETITIONERs

VS.

\$ Padigi Sreerami Reddy, S/o.P.Chinna Rami Reddy,
Aged 49 years, R/o.Gunthapalli Village,
Gorantla Mandal, Ananthapuram District and another

.. RESPONDENTs

! Counsel for the petitioners : Sri N.Ranga Reddy

^ Counsel for the respondents : Sri N.Chandra Sekhar Reddy

< Gist:

> Head Note:

? CITATIONS:

1) (1998) 7 SCC 123

THE HON'BLE SRI JUSTICE A.V. SESA SAI**CIVIL REVISION PETITION No.2624 OF 2016****ORDER:**

Defendant Nos.4, 9, 12, 15 and 16 in O.S.No.128 of 2014 on the file of the Court of the Senior Civil Judge, Penugonda, Ananthapur District, are the petitioners in the present Revision. This Revision assails the order dated 09.03.2016 passed by the said Court in I.A.No.350 of 2015.

2. Heard Sri N.Ranga Reddy, learned counsel, appearing for the petitioners and Sri N.Chandra Sekhar Reddy, learned counsel, appearing for the respondents.

3. Respondents herein instituted O.S.No.128 of 2014 on the file of the Court of the Senior Civil Judge, Penugonda, for partition and separate possession. In the said suit, the learned Senior Civil Judge passed an *ex parte* judgment and decree dated 02.02.2015. Praying to set aside the said *ex parte* decree, the petitioners herein filed an application under Order 9 Rule 13 of the CPC. Along with the said application, they also filed I.A.No.350 of 2015 under the provisions of Section 5 of the Limitation Act seeking condonation of delay of 101 days in filing application under Order 9 Rule 13 of the CPC. The said petition was contested by the plaintiffs by filing a counter. The learned Senior Civil

Judge, by way of an order dated 09.03.2016, dismissed the said application. Calling in question the validity and legal sustainability of the said order, the present Revision has been filed.

4. It is contended by the learned counsel for the petitioners that the order passed by the learned Senior Civil 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 also argued by the learned counsel that had the contents of the affidavit filed in support of the application been considered from proper perspective, the order under Revision would not have emanated. It is further submitted that since the present suit is one for partition, the Court below ought to have adopted liberal approach while considering the application. It is further submitted that the learned Senior Civil Judge did not take into consideration the averment made in the supporting affidavit that the petitioners' advocate had undergone operation to his both knees at Hyderabad.

5. On the contrary, it is vehemently contended by the learned counsel for the plaintiffs/respondents that there is no illegality nor there exists any infirmity in the questioned order, as such, the same is not amenable for any correction by this Court. It is further submitted by the learned counsel that the petitioners herein did not assign valid, proper and

sufficient reasons for condonation of delay in filing the application under Order 9 Rule 13 of the C.P.C.

6. In the above backdrop, now the issue that boils down for consideration of this Court is:

Whether the order passed by the Court below is tenable and sustainable?

7. There is absolutely no dispute with regard to the fact that the present suit is one for the relief of partition and separate possession. The suit schedule property is an extent of Acres 14.54 cents. In the affidavit filed in support of the application for condonation of delay, deponent stated not only about his illness but also the knee operation undergone by their advocate at Hyderabad.

8. In the case of **N.Balakrishnan Vs. M.Krishnamurthy**¹, the Hon'ble Apex Court held that rules of limitation are not meant to destroy the right of the parties and they are meant to see that parties do not resort to dilatory tactics. The Hon'ble Apex Court further held that it must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned and that alone is not enough to turn down his plea and to shut the door against him. Hon'ble Apex Court further held that if the explanation does not smack of *mala fides* or it is not put forth as part of a dilatory

¹ (1998) 7 SCC 123

strategy the court must show utmost consideration to the suitor.

9. In the instant case, as observed supra, the petitioners in their affidavit categorically stated about the knee operation undergone by their counsel at Hyderabad, but the said aspect missed the attention of the Court below. Since it is a suit for partition and as substantial rights of the parties are involved and having regard to the reasons recorded supra, this Court is of the considered opinion that the ends of justice would be served, if the petitioners are permitted to prosecute the suit on merits, however, subject to certain terms.

10. For the aforesaid reasons, Revision is allowed, setting aside the order dated 09.03.2016 passed by the learned Senior Civil Judge in I.A.No.350 of 2015. Consequently, I.A.No.350 of 2015 in O.S.No.128 of 2014 is allowed, subject to payment of costs of Rs.2,000/- to the plaintiffs, within a period of three weeks from the date of receipt of a copy of this order.

12. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

09.09.2016

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Note: L.R. copy to be marked.
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