

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION NO.181 OF 2016

ORDER:

This revision, under Section 115 of the Code of Civil Procedure, 1908 (CPC), is preferred against the order passed by the II Additional Chief Judge, City Civil Court, Hyderabad in I.A.No.1378 of 2012 in O.S.No.111 of 2006 dated 08.10.2015.

The petitioner herein is the plaintiff in O.S.No.111 of 2006. He filed an application under Section 5 of the Limitation Act, 1963 to condone the delay of 110 days in filing an application, under Order IX Rule 9 CPC, to set aside the dismissal order dated 28.08.2009 passed in the suit. In the affidavit filed in support of the application, the petitioner stated that the suit for partition stood posted for trial to 28.08.2009 on costs of Rs.200/-; on that date the suit was dismissed; the petitioner could not attend the Court as he was attending on his wife who was suffering from TB at Sholapur i.e., at his in-law's house; he was away from Hyderabad for a period of six months; in the meanwhile, the suit was dismissed; and he could not file the restoration petition within time. The Court below also noted that the petitioner had explained the delay only for six months stating that he was away from Hyderabad, thereafter due to disturbance of his mind he could not contact his advocate, he took bed rest for six months, and he came to know about the dismissal of the suit only in the month of April 2006 when he received summons in the criminal case. The Court below took note of the contents of the counter affidavit filed by the third respondent that the delay was not 110 days but was more than 1000 days.

In the order under revision, the Court below observed that the suit was dismissed on 28.08.2009, the restoration application was filed on 02.06.2012, and the delay was not of 110 days but of more than three years. On the ground that no sufficient cause was shown which prevented the petitioner from filing the application for restoration of the

suit earlier, and after holding that reference to the delay as only 110 days was a misrepresentation as the delay was more than three years, the Court below dismissed the application filed under Section 5 of the Limitation Act.

Before this Court Sri R.Prasad, learned counsel for the petitioner, would fairly state that the delay in filing the application under Section 5 of the Limitation Act was in excess of 1000 days. He would submit that as it was the fault of the petitioner's advocate in stating that the delay was 110 days, the petitioner should not have been penalised; the Court below should have taken a liberal view and should have permitted the petitioner to file a better affidavit; and then should have condoned the delay. As the fault was contended to be of the petitioner's advocate, I asked Mr. Prasad whether any complaint had been lodged by the petitioner against the said counsel. Sri R. Prasad, learned counsel for the petitioner, would fairly state that the petitioner has neither initiated any action against his counsel nor does he desire to do so.

While the application filed under Section 5 of the Limitation Act refers to the delay as 110 days, the petitioner had furnished an explanation for the delay of six months. As the delay is now admitted to be in excess of three years, and as delay of only six months has been explained, it is evident that the Court below was sought to be misled into believing that the delay was only of 110 days when, in fact, the delay was of more than three years. The order of the Court below does not suffer from any such illegality as to warrant interference in proceedings under Section 115 CPC.

The Civil Revision Petition fails and is, accordingly, dismissed. There shall be no orders as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

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(RAMESH RANGANATHAN, J)

3rd June 2016

RRB