

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 4027 OF 2017

ORDER:

This Revision is directed against the order dated 27.06.2017, whereby and whereunder I.A. No. 136 of 2014 in O.S. No. 54 of 2013, taken out under Section 5 of the Limitation Act, to condone the delay of 270 days in filing the petition under Order IX Rule 13 of the Code of Civil Procedure Code to set aside the *ex parte* decree dated 03.01.2014, was dismissed by the learned Judge, Family Court-cum-Additional District Judge, Anantapuramu.

Heard learned counsel for the petitioners as well as learned counsel for the respondents.

O.S. No. 54 of 2013 was filed by the respondents herein seeking partition of the suit schedule property. The fact that the parties are inter-related is not disputed. The said suit came to be decreed on 03.01.2014 *ex parte*, since no written statement was filed by 08.11.2013, i.e. within the stipulated period of three months, though vakalat on behalf of the petitioners / defendants was filed on 10.06.2013. Thereafter, I.A. No. 136 of 2014 was filed on 30.10.2014. The reasons for the delay in filing the I.A. were stated to be that the deponent, who is a sexagenarian, was suffering from jaundice and that she had taken treatment from a local doctor, who is a quack and the same resulted in complete deterioration of her health and thereby she could not contact her advocate at Anantapuram. It is only on receiving the information from the Advocate and on his advise, she had approached the Court.

As can be seen from the order, the suit itself is filed for partition, involving determination of valuable rights of the parties. I.A.No. 136 of 2014 was taken out to condone the delay in filing the Petition under Order IX Rule 13 CPC to set aside the *ex parte* decree, dated 03.01.2014. In the counter-affidavit, though allegations have been denied, the relationship between the parties is admitted. In those circumstances, the Court ought to have taken a lenient view in entertaining the Application.

Hence, the order dated 27.06.2017 impugned in this Revision is set aside and consequently, I.A. No. 136 of 2014 is allowed.

The Civil Revision Petition is accordingly, allowed. No costs.

24th November 2017

ksld

CHALLA KODANDA RAM, J

