

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.4268 of 2017

Order:

Aggrieved by the dismissal of an application to condone the delay of 600 days, in filing a regular appeal against a decree for partition, the 1st defendant in the suit has come up with the above revision.

2. Heard Mr. Ghantasala Udaya Bhaskar, learned counsel for the petitioner and Mr. T.Vishnu Teja, learned counsel for the 1st respondent/plaintiff.

3. Though the revision is opposed very strongly by the learned counsel for the 1st respondent on the ground that the petitioner has always been guilty of protraction of the proceedings at every stage, we do not think that the conduct of the petitioner during the proceedings before the Trial Court, should have to be looked into for considering the question of delay in filing the appeal. The petitioner remained *ex parte* in the suit and he has resigned himself to that fate. Now he is on first appeal. Therefore, the only question to be considered is whether there was justifiable cause for condoning the delay.

4. In paragraph-2 of the Affidavit in support of the application for condonation of delay, the petitioner has made serious allegations. Paragraph-2 reads as follows:

“2. Myself and the 3rd respondent engaged an advocate and contested against the respondents 1 and 2 in the main suit. As I am an illiterate I have no knowledge

about the Court proceedings, much less in this case, as such I requested the 3rd respondent look after the proceedings in this case after receiving the summon in the main suit. The 3rd respondent engaged an advocate, colluded with the respondents 1 and 2, did not give any instructions regarding to file the written statement and not informed day to day proceedings in this case. Finally, I received notice in final decree in I.A.No.269 of 2015 in O.S.No.624 of 2012 on the file of III Additional Senior Civil Judge at Vijayawada. As such I handed over the summon to the 3rd respondent. Thereafter did not make any representation from the 3rd respondent of the counsel. As such, I got loss and have lost my right to file written statement even though I am an absolute owner of the plaint schedule property of an extent of Ac.2.675 cents as per the contents of the gift deed bearing Document No.316/1975 on the file of Sub-Registrar, Kankipadu, Krishna District.”

5. The allegation of collusion, cannot very lightly be thrown out, in view of one finding recorded by the First Appellate Court in paragraph-11. It reads as follows:

“11. During the course of trial, the plaintiff was examined as P.W.1 and Exs.A-1 to A-7 were marked whereas on behalf of the 2nd defendant, a memo was filed stating that no evidence to be adduced on his behalf.
...”

6. Therefore, the petitioner may have to be given the benefit of such a doubt. If one brother trusts another brother and hands over the papers for defending the suit and the other brother lets him down, the same cannot be stated to be a cause which is totally unjustified for condonation of delay.

7. Therefore, the civil revision petition is allowed, the impugned order is set aside and the application for condonation of delay is allowed. The First Appellate Court

shall endeavour to dispose of the first appeal, within a period of 4 (four) months from the date of receipt of a copy of this order, since the 3rd respondent is stated to be aged 60 years and having ailments. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

10th November, 2017.

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