

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.2022 of 2011

ORDER:

Heard the learned counsel for the petitioner who is no other than the 1st defendant in O.S.No.52 of 2007 on the file of the learned Junior Civil Judge, Tandur, Ranga Reddy District. It is the suit for partition filed by the 1st respondent/plaintiff against the petitioner/ 1st defendant and four other defendants as D.2 to D.5, the family members.

Even the 1st respondent/plaintiff served with notice failed to attend from the material on record supra taken as heard.

Undisputedly, from the petition averments covered by the impugned cryptic order of the lower Court, the reason for having engaged advocate in cause not filing written statement and counter were due to the liver problem of him and he filed a medical certificate also for the period explaining the delay to be condoned of 444 days. The lower Court dismissed the application with the order reads as follows:-

The petitioner's contention is that he was suffering from liver problem and he could not attend the court and he had no knowledge about the court procedure. But the reason shown by the petitioner is not believable. Each and every day's delay should be explained. But the petitioner did not explain the delay of 444days. As such the petition is devoid of merits and the same is dismissed."

In fact, from the perusal of the order, the lower Court not even considered the medical certificate but simply stated that the delay of each day to be explained and did not explain the delay for 444days. It is a fundamental thing to be kept in mind in adopting a pragmatic approach in considering the application for condoning delay u/ sec.5 of the Limitation Act or under Order XLI Rule 3(a) CPC, as the case may be, that once delay is explained for the whole period, there is no

requirement of the same to be explained for each day's delay, if the delay is one and the same that too when medical certificate is filed saying he could not attend all through for the reason covered by the medical certificate of liver problem but for to cover the entire period to condone delay or not within the meaning of sufficient cause for existence from the pragmatic approach, that point was not adverted to by the lower Court much less with reference to the counter contest in opposing the petition by the plaintiff-1st respondent. Hence, the impugned order is liable to be set aside.

Having regard to the above and in the result, the Civil Revision Petition is allowed by setting aside the impugned order, by remanding the matter to the lower Court to permit both the parties with reference to the material on record to advance arguments if necessary to adduce any oral evidence in relation thereto.

Consequently, miscellaneous petitions, if any, pending in this revision, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:08.11.2017
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