

HON'BLE Dr.JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition Nos.4734, 4766 and 4902 of 2017

COMMON ORDER

CRP No.4734 of 2017

This revision is filed by the proposed claimants impugning the dismissal order dt.10.08.2017 in I.A.No.2263 of 2014 in disposed of LAOP No.38 of 2012, u/sec.5 of the Limitation Act, for condonation of delay of 18days in filing a petition unnumbered to set aside the exparte decree, dt.21.07.2014 in O.P.No.38 of 2012. The O.P.No.38 of 2012 is outcome of a reference u/sec.30 of the Land Acquisition Act,1894 (for short, 'the Act') by the 2nd respondent-the LAO-cum-Special Deputy Collector where the other party is the 1st respondent.

CRP No.4766 of 2017

2. This revision is maintained by the self-same petitioners impugning the dismissal order of even date in I.A.No.2663 of 2014 in the OP supra, dismissing their application for according leave to file a petition to set aside the said exparte decree dt.21.07.2014 being not a party to the exparte decree.

CRP No.4902 of 2017

3. This revision is maintained by the self-same petitioners impugning the dismissal order of even date in I.A.No.2264 of 2014 in the OP supra for impleadment of the petitioners who are not shown as parties in the reference when taken on file by the XXV Addl.Chief Judge, City Civil Court, Hyderabad.

4. Notice of 1st respondent not claimed is a sufficient service. Acknowledgment for 2nd respondent received. Heard learned counsel for the petitioners and taken as heard the respondents to decide on merits and perused the material on record.

5. In fact, the question of condoning the delay in filing of application to set aside *ex parte* decree arises when he is a party to the suit/OP proceedings and was set *ex parte* and a decree is passed in his absence. Once he is not a party, the question of seeking to set aside an *ex parte* decree much less to condone the delay does not arise. Even coming to CRP No.4902 of 2017, the question of impleadment invoking Order I Rule 10CPC does not arise for nothing pending before that Court, being *functus officio* from disposal of the reference. Coming to CRP No.4766 of 2017, the question of seeking leave to file a petition to set aside the *ex parte* decree to which he is not a party does not arise but for to invoke the efficacious remedy of maintaining third party appeal with leave of the appellate Court to impugn said *ex parte* decree or decree on merits, as the case may be.

6. Thereby without going into the other merits and to say none of the observations in the dismissal order of the lower Court in I.A.Nos.2263,2264 and 2663 of 2014 any way prejudice the right of the petitioners, all the three revisions are disposed of, however, by keeping stay order in force for three weeks, so that the petitioners' remedy if at all meantime to file a third party appeal, also with reference to the expression of this Court in *Balquis Jahan Begum*

Vs. Mahammad Shahed¹ and A.V. Papayya Shastri Vs. Govt. of A.P.²

7. Consequently, miscellaneous petitions, if any pending in the three revisions, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:14.11.2017

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¹ (2016) 6 ALT 676

² (2007) 4 SCC 221