

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

CIVIL REVISION PETITION No.5812 of 2016

ORDER:

The Civil Revision Petition is arising out of the order dated 26.10.2016 passed by the Principal District Judge, Vizianagaram in I.A.No.694 of 2016 in unnumbered CMA.

2. The petitioner is the defendant and the respondents are the plaintiffs in O.S.No.80 of 2015 which was filed for partition. In the said suit, the plaintiffs filed I.A.No.682 of 2015 under Order 31 Rules 1 and 2 CPC for injunction. The trial Court granted injunction against the defendants. The defendants preferred CMA on the file of Principal District Judge, Vizianagaram. Since there was a delay of 98 days in filing the appeal, the appellant filed I.A.No.694 of 2016 for condoning the same, but it was dismissed on 26.10.2016 as there was no sufficient ground to condone the delay.

3. Learned counsel for the petitioner submits that the delay has occurred due to the mistake committed by the counsel before the trial court in obtaining the copy application and following the due process.

4. Due to the mistake on the part of the counsel in obtaining the copies or due to the mistake of the Court in furnishing the copies, the party cannot be suffered. The delay was only 98 days. The suit is filed for partition. The rights of the parties are to be finally decided in the suit only if they are given an opportunity and allowed to prosecute their case. The petitioner is seriously

contesting before the trial Court. It is submitted that the trial Court granted injunction in the suit for partition against the co-owner. Hence, the parties must be given an opportunity.

5. In view of the foregoing reasons, the delay of 98 days said to have been occurred can be condoned in filing the appeal on payment of costs of Rs.2,000/- payable to the DLSA.

6. Accordingly, the Civil Revision Petition is allowed and the order of the trial Court in I.A.No.694 of 2016 is set aside on payment of costs of Rs.2,000/- (Rupees two thousand only) to the DLSA within two weeks from the date of receipt of a copy of this order.

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

Date : 02.02.2017
ssp

G.SHYAM PRASAD,J

